# DOCUMENT RESUME

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ABSTRACT

The purpose of the Emergency School Aid Act of 1971, H.R. 2266, is to provide financial assistance to meet the special needs incident to the elimination of racial segregation and discrimination among students and faculty in elementary and secondary schools, and to encourage the voluntary elimination, reduction, or prevention of racial isolation in elementary and secondary schools with substantial proportions of minority group students. There are authorized to be appropriated for carrying out this Act not in excess of 500 million dollars for the fiscal year ending June 30, 1971, and not in excess of 1 billion dollars for the succeeding fiscal year. The purpose of H.R. 4847, the Quality Integrated Education Act of 1971, is to provide financial assistance to encourage the establishment and maintenance of stable, quality integrated schools throughout the Nation, serving students from all backgrounds...and to aid schoolchildren to overcome the educational disadvantages of minority group isolation. There are authorized to be appropriated to the Commissioner for the purpose of carrying out this Act 500 million dollars for the period beginning with the enactment of this Act and ending June 30, 1972, and 1 billion dollars for the fiscal year ending June 30, 1973. (JM)

ED 054244

# EMERGENCY SCHOOL AID ACT

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## HEARINGS
BEFORE THE
GENERAL SUBCOMMITTEE ON EDUCATION
OF THE
COMMITTEE ON EDUCATION AND LABOR
HOUSE OF REPRESENTATIVES
NINETY-SECOND CONGRESS
FIRST SESSION
ON

## H.R. 2266, HR. 4847, and Other Related Bills

TO ASSIST SCHOOL DISTRICTS TO MEET SPECIAL PROBLEMS INCIDENT TO DESEGREGATION, AND TO THE ELIMINATION, REDUCTION, OR PREVENTION OF RACIAL ISOLATION, IN ELEMENTARY AND SECONDARY SCHOOLS, AND FOR OTHER PURPOSES

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HEARINGS HELD IN WASHINGTON, D.C.,
MARCH 15 AND 16, 1971

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Printed for the use of the Committee on Education and Labor
Carl D. Perkins, *Chairman*

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EDUCATION & WELFARE
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# EMERGENCY SCHOOL AID ACT

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**MONDAY, MARCH 15, 1971**

House of Representatives,
General Subcommittee on Education
of the Committee on Education and Labor,
*Washington, D.C.*

The General Subcommittee on Education met at 9:30 a.m. pursuant to call, in room 2175, Rayburn House Office Building, Hon. Roman Pucinski (chairman of the subcommittee) presiding.

Present: Representatives Pucinski, Hawkins, Ford, Meeds, Hicks, Quie, Bell, Ruth, Kemp and Peyser.

Staff members present: John F. Jennings, majority counsel; Alexandra Kisla, clerk; Thomas Gerber, assistant clerk; and Charles Radcliffe, minority counsel for education.

(Texts of H.R. 2266, and H.R. 4847 follow:)

[H.R. 2266, 92d Cong., First Sess.]

A BILL To assist school districts to meet special problems incident to desegregation, and to the elimination reduction, or prevention of racial isolation, in elementary and secondary schools, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That this Act may be cited as the "Emergency School Aid Act of 1971".

### PURPOSE

Sec. 2. The purpose of this Act is to provide financial assistance—

(a) to meet the special needs incident to the elimination of racial segregation and discrimination among students and faculty in elementary and secondary schools, and

(b) to encourage the voluntary elimination, reduction, or prevention of racial isolation in elementary and secondary schools with substantial proportions of minority group students.

### APPROPRIATIONS

Sec. 3. (a) There are authorized to be appropriated for carrying out this Act not in excess of $500,000,000 for the fiscal year ending June 30, 1971, and not in excess of $1,000,000,000 for the succeeding fiscal year.

(b) Funds so appropriated shall remain available for obligation for one fiscal year beyond that for which they are appropriated.

### ALLOTMENTS AMONG STATES

Sec. 4. (a) From the sums appropriated pursuant to section 3 for carrying out this Act for any fiscal year, the Secretary shall allot an amount equal to 80 per centum among the States by allotting to each State $100,000 plus an amount which bears the same ratio to the balance of such 80 percentum of such sums as the aggregate number of children enrolled in schools in the State who are Negroes, American Indians, Spanish-surnamed Americans, or members of other racial minority groups as determined by the Secretary, bears to the number of such children in all of the States. The remainder of such sums may be expended by the Secretary as he may find necessary or appropriate (but only for activities described in section 6 and in accordance with the other provisions of this Act) for grants or contracts to carry out the purpose of this Act. The number of such children in each State and in all of the States shall be determined by the Secretary on the basis of the most recent available data satisfactory to him.

(b)(1) The amount by which any allotment to a State for a fiscal year under subsection (a) exceeds the amount which the Secretary determines will be required for such fiscal year for programs or projects within such State shall be available for reallotment to other States in proportion to the original allotments to such States under subsection (a) for that year but with such proportionate amount for any such other States being reduced to the extent it exceeds the sum the Secretary estimates such State needs and will be able to use for such year; and the total of such reductions shall be similarly reallotted among the States whose proportionate amounts were not so reduced. Any amounts reallotted to a State under this subsection during a fiscal year shall be deemed part of its allotment under subsection (a) for such year.

(2) In order to afford ample opportunity for all eligible applicants in a State to submit applications for assistance under this Act, the Secretary shall not fix a date for reallotment, pursuant to this subsection, of any portion of any allotment to a State for a fiscal year which date is earlier than sixty days prior to the end of such fiscal year.

(3) Notwithstanding the provisions of paragraph (1) of this subsection, no portion of any allotment to a State for a fiscal year shall be available for reallotment pursuant to this subsection unless the Secretary determines that the applications for assistance under this Act which have been filed by eligible applicants in that State for which a portion of such allotment has not been reserved (but which would necessitate use of that portion) are applications which do not meet the requirements of this Act, as set forth in sections 6, 7, and 8, or which set forth programs or projects of such insufficient promise for achieving the purpose of this Act that their approval is not warranted.

### ELIGIBILITY FOR FINANCIAL ASSISTANCE

SEC. 5. (a) The Secretary shall provide financial assistance by grant upon application therefor approved in accordance with section 7 to a local educational agency—

(1) which is implementing a plan—

(A) which has been undertaken pursuant to a final order issued by a court of the United States, or a court of any State, and which requires the desegregation of racially segregated students or faculty in the elementary and secondary schools of such agency, or otherwise requires the elimination or reduction of racial isolation in such schools; or

(B) which has been approved by the Secretary as adequate under title VI of the Civil Rights Act of 1964 for the desegregation of racially segregated students or faculty in such schools;

(2) which, without having been required to do so, has adopted and is implementing, or will, if assistance is made available to it under this Act, adopt and implement, a plan for the complete elimination of racial isolation in all the racially isolated schools in the school district of such agency; or

(3) which has adopted and is implementing, or will, if assistance is made available to it under this Act, adopt and implement, a plan—

(A) to eliminate or reduce racial isolation in one or more of the racially isolated schools in the school district of such agency,

(B) to reduce the total number of Negro, American Indian, of Spanish-surnamed American children, or children of other racial minority groups as determined by the Secretary, who are in racially isolated schools in such district,

(C) to prevent racial isolation reasonably likely to occur (in the absence of assistance under this Act) in any school in such district in which school at least 10 per centum, but not more than 50 per centum, of the enrollment consists of such children, or

(D) to enroll and educate in schools which are not racially isolated, Negro, American Indian, or Spanish-surnamed American children, or children of other racial minority groups as determined by the Secretary, who would not otherwise be eligible for enrollment because of nonresidence in the school district of such agency, where such enrollment would make a significant contribution toward reducing racial isolation.

(b) In cases in which the Secretary finds that it would effectively carry out the purpose of this Act, he may assist by grant or contract any public or private n[illegible]rofit agency, institution, or organization (other than a local educational ag[illegible]y) to carry out programs or projects designed to support the development or implementation of a plan described in subsection (a).

### AUTHORIZED ACTIVITIES

SEC. 6. Financial assistance under this Act shall be available for programs or projects which would not otherwise be funded and which involve activities designed to carry out the purpose of this Act, including—

(1) remedial and other services to meet the special needs of children (including gifted and talented children) in schools which are affected by a plan described in section 5 or a program described in section 9(b), when such services are deemed necessary to the success of such plan or program;

(2) the provision of additional professional or other staff members (including staff members specially trained in problems incident to desegregation or the elimination, reduction, or prevention of racial isolation) and the training and retraining of staff for such schools;

(3) comprehensive guidance, counseling, and other personal services for such children;

(4) development and employment of new instructional techniques and materials designed to meet the needs of such children;

(5) innovative interracial educational programs or projects involving the joint participation of Negro, American Indian, or Spanish-surnamed American children, or children of other racial minority groups as determined by the Secretary, and other children attending different schools, including extracurricular activities and cooperative exchanges or other arrangements between schools within the same or different school districts;

(6) repair or minor remodeling or alteration of existing school facilities (including the acquisition, installation, modernization, or replacement of equipment) and the lease or purchase of mobile classroom units or other mobile educational facilities;

(7) the provision of transportation services for students, except that, funds appropriated under the authority of this Act shall not be used to establish or maintain the transportation of students to achieve racial balance, unless funds are voluntarily requested for that purpose by the local educational agency;

(8) community activities, including public education efforts, in support of a plan described in section 5 or a program described in section 9(b);

(9) special administrative activities, such as the rescheduling of students or teachers, or the provision of information to parents and other members of the general public, incident to the implementation of a plan described in section 5 or a program described in section 9(b);

(10) planning and evaluation activities; and

(11) other specially designed programs or projects which meet the purpose of this Act.

### CRITERIA FOR APPROVAL

SEC. 7. (a) In approving applications submitted under this Act (except for those submitted under section 9(b)), the Secretary shall only apply the following criteria:

(1) the need for assistance, taking into account such factors as—

(A) the extent of racial isolation (including the number of racially isolated children and the relative concentration of such children) in the school district to be served as compared to other school districts in the State,

(B) the financial need of such school district as compared to other school districts in the State,

(C) the expense and difficulty of effectively carrying out a plan described in section 5 in such school district as compared to other school districts in the State, and

(D) the degree to which measurable deficiencies in the quality of public education afforded in such school district exceed those of other school districts within the State;

(2) the degree to which the plan described in section 5, and the program or project to be assisted, are likely to effect a decrease in racial isolation in racially isolated schools, or in the case of applications submitted under section 5(a)(3)(C), the degree to which the plan described in section 5, and the program or project, are likely to prevent racial isolation from occurring or increasing (in the absence of assistance under this Act);

(3) the degree to which the plan described in section 5 is sufficiently comprehensive to offer reasonable assurance that it will achieve the purpose of this Act;

(4) the degree to which the program or project to be assisted affords promise of achieving the purpose of this Act;

(5) that (except in the case of an application submitted under section 9(a)) the amount necessary to carry out effectively the program or project does not exceed the amount available for assistance in the State under this Act in relation to the other applications from the State pending before him; and

(6) the degree to which the plan described in section 5 involves to the fullest extent practicable the total educational resources, both public and private, of the community to be served.

(b) The Secretary shall not give less favorable consideration to the application of a local educational agency which has voluntarily adopted a plan qualified for assistance under this Act (due only to the voluntary nature of the action) than to the application of a local educational agency which has been legally required to adopt such a plan.

### ASSURANCES

SEC. 8. (a) An application submitted for approval under section 7 shall contain such information as the Secretary may prescribe and shall contain assurances that—

(1) the appropriate State educational agency has been given reasonable opportunity to offer recommendations to the applicant and to submit comments to the Secretary;

(2) in the case of an application by a local educational agency, to the extent consistent with the number of children, teachers, and other educational staffs in the school district of such agency enrolled or employed in private nonprofit elementary and secondary schools whose participation would assist in achieving the purpose of this Act, such agency (after consultation with the appropriate private school officials) has made provisions for their participation on an equitable basis;

(3) the applicant has adopted effective procedures, including provisions for such objective measurements of educational and other change to be effected by this Act as the Secretary may require, for the continuing evaluation of programs or projects under this Act, including their effectiveness in achieving clearly stated program goals, their impact on related programs or projects and upon the community served, and their structure and mechanisms for the delivery of services, and including, where appropriate, comparisons with proper control groups composed of persons who have not participated in such programs or projects;

(4) in the case of an application by a local educational agency, the applicant (A) has not, subsequent to the commencement of its 1969–1970 school year, unlawfully donated, leased, sold, or otherwise disposed of real or personal property or services to a nonpublic elementary or secondary school or school system practicing discrimination on the basis of race, color, or national origin, or has rescinded such transaction (or received consideration in lieu thereof) in accordance with regulations of the Secretary; (B) has not unlawfully donated, leased, sold, or otherwise disposed of real or personal property or services to such a nonpublic school or school system where such transaction has produced a substantial decrease in the assets available for public education in the school district of such agency, or has rescinded such transaction (or received consideration in lieu thereof) in accordance with regulations of the Secretary; and (C) will not donate, lease, sell, or otherwise dispose of real or personal property or services to any such nonpublic school or school system;

(5) in the case of an application by a local educational agency, the applicant has not reduced its fiscal effort for the provision of free public education for children in attendance at the schools of such agency for the fiscal year for which assistance is sought under this Act to less than that of the second preceding fiscal year;

(6) the applicant is not reasonably able to provide, out of non-Federal sources, the assistance for which the application is made;

(7) the applicant will provide such other information as the Secretary may require to carry out the purpose of this Act;

(8) in the case of an application by a local educational agency, the plan with respect to which such agency is seeking assistance (as specified in section 5(a)(1)) does not involve freedom of choice as a means of desegregation unless the Secretary determines that freedom of choice has achieved, or will achieve, the complete elimination of a dual school system in the school, district of such agency;

(9) the current expenditure per pupil (as defined in section 11(a)) which such agency makes from revenues derived from its local sources for the academic year for which assistance under this Act will be made available to such agency is not less than the current expenditure per pupil which such agency made from such revenues for (A) the academic year preceding the academic year during which the implementation of a plan described in section 5 was commenced, or (B) the third academic year preceding the academic year for which such assistance will be made available, whichever is later;

(10) staff members of the applicant who work directly with children, and professional staff of such applicant who are employed on the administrative level, will be hired, assigned, promoted, paid, demoted, dismissed or otherwise treated without regard to their membership in a minority group, except that no assignment pursuant to a court order or a plan approved under title VI of the Civil Rights Act of 1964 will be considered as being in violation of this subsection;

(11) for each academic year which assistance is made available to the applicant under this Act, it has taken or is in the process of taking all practicable steps to avail itself of all assistance for which it is determined to be eligible under any program administered by the Commissioner of Education; and

(12) no practices or procedures, including testing, will be employed by the applicant in the assignment of children to classes, or otherwise in carrying out curricular or extracurricular activities, within the schools of such applicant in such a manner as (A) to result in the discriminatory isolation of Negro, American Indian, Spanish-surnamed American children, or children who are members of other racial minority groups as determined by the Secretary, in such classes or with respect to such activities, or (B) to discriminate against such children on the basis of their being members of any such minority group.

(b) The Secretary shall not finally disapprove in whole or in part any application for funds submitted by a local educational agency eligible under section 5 without first notifying the local educational agency of the specific reasons for his disapproval as contained in section 7 and subsection (a) above and without affording the agency a reasonable time to modify its application.

(c) The Secretary may, from time to time, set dates by which applications shall be filed.

(d) In the case of an application by a combination of local educational agencies for jointly carrying out a program or project under this Act, at least one such agency shall be an agency described in section 5(a) or section 9 and any one or more such agencies joining in such application may be authorized to administer such program or project.

### SPECIAL PROGRAMS

SEC. 9. (a) From the funds available to him under the second sentence of section 4(a) the Secretary is authorized to make grants to eligible local educational agencies to carry out model or demonstration programs related to the purpose of this Act if in the Secretary's judgment these programs make a special contribution to the development of methods, techniques, or programs designed to eliminate racial segregation or to eliminate, reduce, or prevent racial isolation in elementary and secondary schools.

(b) From the funds available to him under the second sentence of section 4(a) the Secretary is also authorized to make grants to local educational agencies to carry out programs for children who are from environments where the dominant language is other than English (such as French-speaking and Oriental children) and who, (1) as a result of limited English-speaking ability, are educationally deprived, (2) have needs similar to other children participating in programs or projects assisted under this Act, and (3) attend a school in which they constitute more than 50 per centum of the enrollment.

### PAYMENTS

SEC. 10. (a) Upon his approval of an application for assistance under this Act, the Secretary shall reserve from the applicable allotment (including any applicable reallotment) available therefor the amount fixed for such application.

(b) The Secretary shall pay to the applicant such reserved amount, in advance or by way of reimbursement, and in such installments consistent with established practice, as he may determine.

(c)(1) In the case of an application to be funded under the first sentence of section 4(a) which is submitted by a local educational agency which is located in a State in which no State agency is authorized by law to provide, or in the case in which there is a substantial failure by a local educational agency approved for a program or project under this Act to provide, for effective participation on an equitable basis in programs or projects authorized under this Act by children enrolled in, or by teachers or other educational staff of, any one or more private nonprofit elementary or secondary schools located in the school district of such agency, the Secretary shall arrange for the provision, on an equitable basis, of such programs or projects and shall pay the costs thereof for any fiscal year out of that State's allotment. The Secretary may arrange for such programs through contracts with institutions of higher education, or other competent nonprofit institutions or organizations.

(2) In determining the amount to be withheld from any State's allotment for the provision of such programs or projects, the Secretary shall take into account the number of children and teachers and other educational staff who are excluded from participation therein, and who, except for such exclusion, might reasonably have been expected to participate.

(d) After making a grant or contract under this Act, the Secretary shall notify the appropriate State educational agency of the name of the approved applicant and of the amount approved.

(e) The amount of financial assistance to a local educational agency under this Act may not exceed those net additional costs which are determined by the Secretary, in accordance with regulations prescribed by him, to be the result of the implementation of a plan under section 5(a).

## DEFINITIONS

SEC. 11. As used in this Act, except when otherwise specified—

(a) The term "current expenditure per pupil" for a local educational agency means (1) the expenditures for free public education, including expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities, but not including expenditures for community services, capital outlay, and debt service, or any expenditures made from funds granted under such Federal program of assistance as the Secretary may prescribe, divided by (2) the number of children in average daily attendance to whom such agency provided free public education during the year for which the computation is made.

(b) The term "equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them, and includes all other items necessary for the provision of education services, such as instructional equipment and necessary furniture, printed, published, and audiovisual instructional materials, and other related material.

(c) The term "gifted and talented children" means, in accordance with objective criteria prescribed by the Secretary, children who have outstanding intellectual ability or creative talent.

(d) The term "local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control, or direction, of public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools, or a combination of local educational agencies; and includes any other public institution or agency having administrative control and direction of a public elementary or secondary school; and where responsibility for the control and direction of the activities in such schools which are to be assisted under this Act is vested in an agency subordinate to such a board or other authority, the Secretary may consider such subordinate agency as a local educational agency for purpose of this Act.

(e) The term "nonprofit" as applied to an agency, organization, or institution means an agency, organization, or institution owned or operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(f) The terms "racially isolated school" and "racial isolation" in reference to a school mean a school and condition, respectively, in which Negro, American Indian, or Spanish-surnamed American children, or children who are members of other racial minority groups as determined by the Secretary, constitute more than 50 per centum of the enrollment of a school.

(g) The terms "elementary and secondary school" and "school" mean a school which provides elementary or secondary education, as determined under State law, except that it does not include any education provided beyond grade 12.

(h) The term "Secretary" means the Secretary of Health, Education, and Welfare.

(i) The term "State educational agency" means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law for this purpose.

(j) The term "State" means one of the fifty States or the District of Columbia.

### EVALUATION

Sec. 12. Such portion as the Secretary may determine, but not more than 1 per centum, of any appropriation under this Act for any fiscal year shall be available to him for evaluation (directly or by grants or contracts) of the programs and projects authorized by this Act, and in the case of allotments from any such appropriation, the amount available for allotment shall be reduced accordingly.

### JOINT FUNDING

Sec. 13. Pursuant to regulations prescribed by the President, where funds are advanced by the Department of Health, Education, and Welfare and one or more other Federal agencies for any project or activity funded in whole or in part under this Act, any one Federal agency may be designated to act for all in administering the funds advanced. In such cases, any such agency may waive any technical grant or contract requirement (as defined by regulations) which is inconsistent with the similar requirements of the administering agency or which the administering agency does not impose.

### NATIONAL ADVISORY COUNCIL

Sec. 14. The President shall appoint a National Advisory Council on the Education of Racially Isolated Children, consisting of twelve members, for the purpose of reveiwing the administration and operation of this Act and making recommendations for the improvement of this Act and its administration and operation and for increasing the effectiveness of programs or projects carried out pursuant to this Act.

### REPORTS

Sec. 15. The Secretary shall include in his annual report to the Congress a full report as to the administration of this Act and the effectiveness of programs or projects thereunder.

### GENERAL PROVISIONS

Sec. 16. (a) The provision of parts B and C of the General Education Provisions Act (title IV of Public Law 247 (Ninetieth Congress) as amended by title IV of Public Law 230 (Ninety-first Congress)) shall apply to the program of Federal assistance authorized under this Act as if such program were an applicable program under such General Education Provisions Act, and the Secretary shall have the authority vested in the Commissioner of Education by such parts with respect to such program.

(b) Section 422 of such General Education Provisions Act is amended by inserting "the Emergency School Aid Act of 1971;" after "the International Education Act of 1966;".

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[H.R. 4847, 92d Cong. First Sess.]

**A BILL** To provide financial assistance for the establishment and maintenance of stable, quality, integrated education in elementary and secondary schools to assist school districts to overcome the adverse educational effects of minority group isolation, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That this Act may be cited as the "Quality Integrated Education Act of 1971".

### FINDINGS AND PURPOSE

Sec. 2. (a) The Congress hereby finds that the segregation of schoolchildren by race, color, or national origin, whatever its cause or origin, is detrimental to all children and deprives them of equality of educational opportunity; that conditions of such segregation exist throughout the Nation, and, as a result, substantial numbers of children are suffering educational deprivation; and that the process of establishing and maintaining stable, quality, integrated schools improves the quality of education for all children and often involves the expenditure of additional funds to which local educational agencies do not have access.

(b) It is the purpose of this Act (1) to provide financial assistance to encourage the establishment and maintenance of stable, quality, integrated schools throughout the Nation, serving students from all backgrounds, which derive full advantage from the enriched educational opportunities provided by the education of children from diverse backgrounds in an environment sensitive to the potential contribution of each child to the education of all, through the utilization of modern educational methods, practices, and techniques, including, where appropriate, programs of integrated bilingual, bicultural education, and (2) to aid schoolchildren to overcome the educational disadvantages of minority group isolation.

### APPROPRIATIONS

Sec. 3. (a) The Commissioner, shall, in accordance with the provisions of this Act, carry out a program designed to achieve the purposes set forth in section 2(b). There are authorized to be appropriated to the Commissioner, for the purpose of carrying out this Act, $500,000,000 for the period beginning with the enactment of this Act and ending June 30, 1972, and $1,000,000,000 for the fiscal year ending June 30, 1973. Funds so appropriated shall remain available for obligation and expenditure during the fiscal year succeeding the fiscal year for which they are appropriated, except that funds reserved under paragraph (1) of subsection (b) shall remain available until expended. Funds so appropriated shall be available for grants and contracts under this Act only to the extent that the sums appropriated to the Office of Education for any fiscal year exceed the sums appropriated to the Office of Education for the next preceding fiscal year, except that sums appropriated pursuant to this Act shall not be considered in determining the sums appropriated to the Office of Education for any such next preceding fiscal year.

(b)(1) From the sums appropriated pursuant to subsection (a), the Commissioner shall reserve—

(A) not less than 10 per centum of each of the amounts authorized to be appropriated pursuant to such subsection for the purposes of section 8;

(B) not less than 5 per centum of each of the amounts authorized to be appropriated pursuant to such subsection for the purposes of section 10;

(C) not less than 3 per centum of each of the amounts authorized to be appropriated pursuant to such subsection for the purposes of section 11.

(2) If the total amount of the sums appropriated pursuant to subsection (a) for any fiscal year does not constitute at least four times the aggregate of the amounts specified for reservation pursuant to paragraph (1) for that fiscal year, each of the amounts so specified for that fiscal year shall be ratably reduced until the aggregate of the amounts reserved under paragraph (1) does not exceed one-fourth of an amount equal to the sums so appropriated.

(3) Of the sums appropriated pursuant to subsection (a), the Commissioner is authorized to reserve an amount, not in excess of an amount equal to 10 per centum of such sums, for the purposes of section 7(a).

(4) Of the sums appropriated pursuant to subsection (a), the Commissioner shall reserve 10 per centum for grants by him to local educational agencies making applications under section 5(a)(2).

### APPORTIONMENT AMONG STATES

Sec. 4. (a)(1) From the sums appropriated pursuant to section 3(a) which are not reserved under section 3(b) for any fiscal year, the Commissioner shall apportion to each State for grants within that State an amount which bears the same ratio to such sums as the number of minority group children enrolled in public schools in that State bears to the number of such children in all the States, except that the amount apportioned to any State shall not be less than $100,000.

(2) Of the amount apportioned to each State under paragraph (1), the Commissioner shall reserve not less than one-sixth but nor more than one-fourth for grants to local educational agencies in that State pursuant to section 5(b).

(3) Of the amount apportioned to each State under paragraph (1) the Commissioner shall reserve not less than 10 per centum for grants in that State pursuant to section 7(b).

(b) The amount of any State's apportionment under subsection (a) which exceeds the amount which the Commissioner determines, in accordance with criteria established by regulation, will be required during the period for which the apportionment is available for programs and projects within such State, shall be available for reapportionment from time to time, on such dates during such period as the Commissioner shall fix by regulation, to other States in prof portion to the original apportionments to such States under subsection (a). I- the Commissioner determines, in accordance with criteria established by regulation, that the amount which would be reapportioned to a State under the first sentence of this subsection exceeds the amount which will be required during the period of the apportionment for programs and projects within such State, the amount of such State's reapportionment shall be reduced to the extent of such excess, and the total amount of any reductions pursuant to this sentence shall be available for reapportionment under the first sentence of this subsection. Any amount reapportioned to a State under this subsection during the period of any apportionment shall be deemed a part of its apportionment for that period; and any amount reserved pursuant to paragraph (2) of subsection (a) and reapportioned under this subsection shall be used solely for the purposes for which it was originally reserved.

### ELIGIBILITY FOR ASSISTANCE

SEC. 5. (a)(1) The Commissioner is authorized to make a grant to, or a contract with, a local educational agency only if, in accordance with criteria established by regulation, he determines—

(A) that the local educational agency has adopted a plan for the establishment or maintenance of one or more stable, quality, integrated schools; and

(B) that the number of minority group children in attendance at the schools of such agency is (i) at least one thousand and at least 20 per centum of the number of all children in attendance at such schools, or (ii) at least three thousand and at least 10 per centum of the number of all children in attendance at such schools.

(2) Notwithstanding the provisions of clause (B) of paragraph (1), the Commissioner is authorized to make grants, in accordance with special eligibility criteria established by regulation for the purposes of this paragraph, to a local educational agency which does not meet the requirements of such clause (B), where such local educational agency is located within, or adjacent to, a Standard Metropolitan Statistical Area and makes joint arrangements with an additional local educational agency, located within the Standard Metropolitan Statistical Area and containing a substantial proportion of minority group students, for the establishment and maintenance of one or more stable, quality integrated schools. For the purposes of this subsection, an integrated school shall be a school with a student body containing a substantial proportion of children from educationally advantaged backgrounds and in which the proportions of minority group students are at least 50 per centum of the proportions of minority group students enrolled in all schools of the local educational agencies within the Standard Metropolitan Statistical Area, and a faculty and administrative staff with substantial representation of minority group persons.

(b) The Commissioner is authorized to make grants to, or contracts with, local educational agencies for unusually promising pilot programs or projects designed to overcome the adverse effects of minority group isolation by improving the academic achievement of children in one or more minority group isolated schools, if he determines that the local educational agency had a number of minority group children in average daily membership in the public schools, for the fiscal year preceding the fiscal year for which assistance is to be provided, (1) of at least 15,000, or (2) constituting more than 50 per centum of such average daily membership of all children in such schools.

(c) No local educational agency making application under this section shall be eligible to receive a grant or contract in an amount in excess of the amount determined by the Commissioner, in accordance with regulations setting forth criteria established for such purpose, to be the additional cost to the applicant arising out of activities authorized under this Act, above that of the activities normally carried out by the local educational agency.

(d)(1) No local educational agency shall be eligible for assistance under this Act if it has, after August 18, 1970—

(A) transferred (directly or indirectly by gift, lease, loan, sale, or other means) real or personal property to, or made any services available to any nonpublic school or school system (or any organization controlling, or intending to establish, such a school or school system) without prior determination that such nonpublic school or school system (i) is not operated on a racially segregated basis as an alternative for children seeking to avoid attendance in desegregated public schools, and (ii) does not otherwise practice, or permit to be practiced, discrimination on the basis of race, color, or national origin in the operation of any school activity;

(B) had in effect any practice, policy, or procedure which results (or has resulted) in the disproportionate demotion or dismissal of instructional or other personnel from minority groups in conjunction with desegregation or the establishment of an integrated school, or otherwise engaged in discrimination based upon race, color, or national origin in the hiring, promotion, or assignment of employees of the agency (or other personnel for whom the agency has any administrative responsibility);

(C) in conjunction with desegregation or the establishment of an integrated school, adopted any procedure for the assignment of students to or within classes which results in segregation of children for a substantial portion of the school day; or

(D) had in effect any other practice, policy, or procedure, such as limiting curricular or extracurricular activities (or participation therein by children) in order to avoid the participation of minority group students in such activities, which discriminates among children on the basis of race, color, or national origin;

except that, in the case of any local educational agency which is ineligible for assistance by reason of clause (A), (B), (C), or (D), such agency may make application for a waiver of ineligibility, which application shall specify the reason for its ineligibility, contain such information and assurances as the Secretary shall require by regulation in order to insure that any practice, policy, or procedure, or other activity resulting in the ineligibility has ceased to exist or occur and include such provisions as are necessary to insure that such activities do not reoccur after the submission of the application.

(2)(A) No local educational agency shall be eligible for a waiver under paragraph (1) if—

(i) it is ineligible by reason of clause (A), (B), (C), or (D) of paragraph (1) because of transactions, practices, policies, or procedures which existed or occurred after August 18, 1970; and

(ii) it has received assistance under the appropriation in the paragraph headed "Emergency School Assistance" in the Office of Education Appropriations Act, 1971 (Public Law 91-380).

(B)(i) In the case of any local educational agency which is ineligible for assistance under this Act by reason of subparagraph (A), such agency may make a special application for a waiver of its ineligibility, which application shall include (I) all the specifications, procedures, assurances, and other information required for a waiver under the exception set forth in paragraph (1), and (II) in addition, such other data, plans, assurances, and information as the Secretary shall require in order to insure compliance with this subparagraph (B).

(ii) The additional matters required by the Secretary under clause (II) of subparagraph (B)(i) shall at least include sufficient information as to enable the Commissioner to properly evaluate the application submitted under section 9 by the applicant for a special waiver under this subparagraph (B) and advise the Secretary with respect to the merit of the program for which assistance is sought.

(3) Applications for waivers under paragraphs (1) and (2) may be approved only by the Secretary. The Secretary's functions under this paragraph shall, notwithstanding any other provision of law, not be delegated.

(4) No application for assistance under this Act shall be approved prior to a determination by the Commissioner that the applicant is not ineligible by reason of this subsection. No waiver under paragraph (2) shall be granted until the Commissioner has determined that the special applicant has submitted an application under section 9 of extraordinary merit.

(5) All determinations pursuant to this subsection shall be carried out in accordance with criteria and investigative procedures established by regulations of the Secretary for the purpose of compliance with this subsection.

(6) All determinations and waivers pursuant to this subsection shall be in writing. The Committee on Labor and Public Welfare of the Senate and the Committee on Education and Labor of the House of Representatives shall each be given notice of an intention to grant any waiver under this subsection, which notice shall be accompanied by a copy of the proposed waiver for which notice is given and copies of all determinations relating to such waiver. The Commissioner shall not approve an application by a local educational agency which requires a waiver under this subsection prior to thirty days after receipt of the notice required by the preceding sentence by the chairman of the Committee on Labor and Public Welfare of the Senate and the chairman of the Committee on Education and Labor of the House of Representatives.

### AUTHORIZED ACTIVITIES

Sec. 6. (a) Sums appropriated pursuant to section 3(a) and apportioned to a State pursuant to section 4 (which have not been reserved under paragraph (2) or (3) of section 4(a)) and the sums reserved pursuant to section 3(b)(4) shall be available for grants to, and contracts with, local educational agencies in that State which have been established as eligible under section 5(a), to assist such agencies in carrying out the following programs and projects designed to establish or maintain stable, quality, integrated schools, as necessary and appropriate to carry out the purposes of this Act:

(1) the development and use of new curriculums and instructional methods, practices, and techniques to support a program of instruction for children from all racial, ethnic, and economic backgrounds, including instruction in the language and cultural heritage of minority groups;

(2) remedial services, beyond those provided under the regular school program conducted by the local educational agency, including student-to-student tutoring;

(3) guidance and counseling services, beyond those provided under the regular school program conducted by the local educational agency, designed to promote mutual understanding among minority group and nonminority group parents, students, and teachers;

(4) administrative and auxiliary services to facilitate the success of the project;

(5) community activities, including public information efforts, in support of a plan, program, project, or other activities described in this section;

(6) recruiting, hiring, and training of teacher aides: *Provided*, That in recruiting teacher aides, preference shall be given to parents of children attending schools assisted under section 5(a);

(7) inservice teacher training designed to enhance the success of schools assisted under section 5(a) through contracts with institutions of higher education, or other institutions, agencies, and organizations individually determined by the Commissioner to have special competence for such purpose;

(8) planning programs and projects under this section, the evaluation of such programs and projects, and dissemination of information with respect to such programs and projects; and

(9) repair of minor remodeling or alteration of existing school facilities (including the acquisition, installation, modernization, or replacement of equipment) and the lease or purchase of mobile classroom units or other mobile educational facilities.

In the case of programs and projects involving activities described in clause (9), the inclusion of such activities must be found to be a necessary component of, or necessary to facilitate, a program or project involving other activities described in this section or subsection (b), and in no case involve an expenditure in excess of 10 per centum of the amount made available to the applicant to carry out the program or project. The Commissioner shall promulgate regulations defining the term "repair or minor remodeling or alteration".

(b) Sums reserved under section 4(a)(2) shall be available for grants to, and contracts with, local educational agencies eligible for assistance under section 5(b) to carry out innovative pilot programs and projects which are specifically designed to assist in overcoming the adverse effects of minority group isolation, by improving the educational achievement of children in minority group isolated schools, including the activities described in clauses (1) through (9) of subsection (a), as they may be used to accomplish such purpose.

### SPECIAL PROGRAMS AND PROJECTS

Sec. 7. (a)(1) Amounts reserved by the Commissioner pursuant to section 8 (b)(3) shall be available to him for grants and contracts under this subsection.

(2) The Commissioner is authorized to make grants to, and contracts with, State and local educational agencies, and other public and private nonprofit agencies and organizations (or a combination of such agencies and organizations) for the purpose of supporting special programs and projects carrying out activities described in section 6, which the Commissioner determines will make substantial progress toward achieving the purposes of this Act.

(b) From the amounts reserved pursuant to section 4(a)(3), the Commissioner is authorized to make grants to, and contracts with, public and private nonprofit agencies, institutions, and organizations (other than local educational agencies and nonpublic elementary and secondary schools) for programs and projects to promote equality of educational opportunity, through facilitating the participation of parents, students, and teachers in the design and implementation of comprehensive educational planning; the provision of services which will enable parents to become effective participants in the educational process; the conduct of activities which foster understanding among minority group and nonminority group parents, students, teachers, and school officials, including public information and school-community relations activities; and the conduct of school-related activities to reinforce student growth and achievement.

### EDUCATION PARKS

SEC. 8. From the sums reserved pursuant to section 3(b)(1)(A), the Commissioner is authorized to make grants to State and local educational agencies to assist in the construction of education parks in Standard Metropolitan Statistical Areas. For the purposes of this section, the term "education park" means an integrated school or cluster of such schools located on a common site, within a Standard Metropolitan Statistical Area, of sufficient size to achieve maximum economy of scale consistent with sound educational practice, providing the full range of preschool, elementary, and secondary education, with a student body containing a substantial proportion of children from educationally advantaged backgrounds, which is representative of the minority group and nonminority group student population of the Standard Metropolitan Statistical Area, and a faculty and administrative staff with substantial representation of minority group persons.

### APPLICATIONS

SEC. 9. (a) Any local educational agency desiring to receive assistance under this Act shall submit to the Commissioner an application therefor at such time, in such form, and containing such information as the Commissioner shall require by regulation. Such application, together with all correspondence and other written materials relating thereto, shall be made readily available to the public by the applicant and by the Commissioner. The Commissioner may approve an application if he determines that such application—

(1) sets forth a plan, and such policies and procedures, as will assure that (A) in the case of an application under section 5(a), the applicant will initiate or continue a program specifically designed to establish or maintain at least one or more stable, quality, integrated schools, or (B) in the case of an application under section 5(b), the applicant will initiate or expand an innovative program specifically designed to meet the educational needs of children attending one or more minority group isolated schools;

(2) has been developed—

(A) in open consultation with parents, teachers, and, where applicable, secondary school students, including public hearings at which such persons have had a full opportunity to understand the program for which assistance is being sought and to offer recommendations thereon, and

(B) with the participation and, subject to subsection (b), approval of a committee composed of parents of children participating in the program for which assistance is sought, teachers, and, where applicable, secondary school students, of which at least half the members shall be such parents, and at least half shall be persons from miniorty groups;

(3) sets forth such policies and procedures as will insure that the program for which assistance is sought will be operated in consultation with, and the involvement of, parents of the children and representatives of the area to be served, including the committee established for the purposes of clause (2)(B);

(4) sets forth such policies and procedures, and contains such information, as will insure that funds paid to the applicant under the application be used solely to pay the additional cost to the applicant in carrying out the plan and program described in the application;

(5) contains such assurances and other information as will insure that the program for which assistance is sought will be administered by the applicant, and that any funds received by the applicant, and any property derived therefrom, will remain under the administration and control of the applicant;

(6) sets forth such policies and procedures, and contains such information, as will insure that funds made available to the applicant (A) under this Act will be so used (i) as to supplement and, to the extent practicable, increase the level of funds that would, in the absence of such funds, be made available from non-Federal sources for the purposes of the program for which assistance is sought, and for promoting the integration of the schools of the applicant and for the education of children participating in such program, and (ii) in no

case, as to supplant such funds from non-Federal sources, and (B) under any other law of the United States will, in accordance with standards established by regulation, be used in coordination with such programs to the extent consistent with such other law;

(7) in the case of an application for assistance under section 5(b), that the program or project to be assisted will involve an additional expenditure per pupil to be served, determined in accordance with regulations prescribed by the Commissioner, of sufficient magnitude to provide reasonable assurance that the desired educational impact will be achieved and that funds under this Act will not be dispersed in such a way as to undermine their effectiveness;

(8) in the case of an application by a local educational agency, that the State deucational agency governing the school district or school districts in which the approved program or project will be carried out has been given reasonable opportunity to offer recommendations to the applicant and to submit comments to the Commissioner;

(9) sets forth effective procedures, including provisions for objective measurement of change in educational achievement and other change to be effected by programs conducted under this Act, for the continuing evaluation of programs or projects under this Act, including their effectiveness in achieving clearly stated program goals, their impact on related programs and upon the community served, and their structure and mechanisms for the delivery of services; and

(10) provides (A) that the applicant will make periodic reports at such time, in such form, and containing such information as the Commissioner shall require by regulation, which regulation shall require at least—

  (i) in the case of reports relating to performance, that the reports be consistent with specific criteria related to the program objectives, and

  (ii) that the reports include information relating to educational achievement of children in the schools of the applicant,

and (B) that the applicant will keep such records and afford such access thereto as—

  (i) will be necessary to assure the correctness of such reports and to verify them, and

  (ii) will be necessary to assure the public adequate access to such reports and other written materials.

(b) In the event the committee established pursuant to clause (2)(B) of subsection (a) does not, after a reasonable opportunity to do so, approve an application under this section, the local educational agency may submit the application for approval by the Commissioner. The committee may, upon written notification to the local educational agency and the Commissioner, seek a review of the reasons for failure to obtain approval. Upon receipt of any such notice, a local educational agency shall promptly file with the Commissioner a statement of the issues in question, the reason for submission of the application without such approval, and its grounds for desiring approval of the application by the Commissioner as submitted, and shall attach thereto a statement of the reasons of the committee respecting its failure to approve the application. Upon receipt of a notice filed under the second sentence of this subsection, the Commissioner shall take no action with respect to approval of the application in question until he has reviewed the matters submitted to him by the local educational agency and any matters submitted to him by the committee and, when he determines it to be appropriate, has granted an opportunity for an informal hearing. Within thirty days after the Commissioner has received the matters required to be submitted under the third sentence of this subsection, he shall make a finding as to whether the local educational agency was justified in submitting the application without approval, as required under clause (2)(B) of subsection (a). Upon his finding of justification, the Commissioner may proceed with respect to the approval of the application. Such finding, and the reasons therefor, shall be in writing and shall be made available to the local educational agency and the committee.

(c)(1) The Commissioner shall, from time to time, set dates by which applications for grants under this Act shall be filed and may prescribe an order of priority to be followed in approving such applications.

(2) In determining whether to make a grant to contract under section 5 or in fixing the amount thereof, the Commissioner shall give priority to—

  (A) in case applications submitted under section 5(a), applications from local educational agencies which place the largest numbers and proportions of minority group students in stable, quality, integrated schools; and

  (B) applications which offer the greatest promise of providing quality education for all participating children.

## EDUCATIONAL TELEVISION

SEC. 10. (a) The sums reserved pursuant to section 3(b)(1)(B) for the purpose of carrying out this section shall be available for grants and contracts in accordance with subsection (b).

(b)(1) The Commissioner shall carry out a program of making grants to, or contracts with, not more than ten public or private nonprofit agencies, institutions, or organizations with the capability of providing expertise in the development of television programing, in sufficient number to assure diversity, to pay the cost of development and production of integrated children's television programs of cognitive and affective educational value.

(2) Television programs developed in whole or in part with assistance provided under this Act shall be made reasonably available for transmission, free of charge, and shall not be transmitted under commercial sponsorship.

(3) The Commissioner may approve an application under this section only if he determines that the applicant—

(A) will employ members of minority groups in responsible positions in development, production, and administrative staffs;

(B) will utilize modern television techniques of research and production; and

(C) has adopted effective procedures for evaluating education and other change achieved by children viewing the program.

## ATTORNEYS' FEES

SEC. 11. (a) Upon the entry of a final order by a court of the United States against a local educational agency, a State (or any agency thereof), or the Department of Health, Education, and Welfare for failure to comply with any provision of this Act, title I of the Elementary and Secondary Education Act of 1965 or discrimination on the basis of race, color, or national origin in violation of title VI of the Civil Rights Act of 1964, or of the fourteenth article of amendment to the Constitution of the United States as they pertain to elementary and secondary education, such court shall award, from funds reserved pursuant to section 3(b)(1)(C), reasonable counsel fee, and costs not otherwise reimbursed, for services rendered, and costs incurred, after the date of enactment of this Act to the party obtaining such order.

(b) The Commissioner shall transfer all funds reserved pursuant to section 3(b)(1)(C) to the Administrative Office of the United States Courts for the purpose of making payments of fees awarded pursuant to subsection (a).

## DEFINITIONS

SEC. 12. Except as otherwise specified, the following definitions shall apply to the terms used in this Act:

(1) The term "Commissioner" means the Commissioner of Education; and the term "Secretary" means the Secretary of Health, Education, and Welfare.

(2) The term "elementary school" means a day or residential school which provides elementary education, as determined under State law.

(3) The term "equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them, and includes all other items necessary for the provision of educational services, such as instructional equipment and necessary furniture, printed, published, and audiovisual instructional materials, and other related material.

(4) The term "institution of higher education" means an educational institution in any State which—

(A) admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(B) is legally authorized within such State to provide a program of education beyond high school;

(C) provides an educational program for which it awards a bachelor's degree; or provides not less than a two-year program which is acceptable for full credit toward such a degree, or offers a two-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semiprofessional level in engineering, scientific, or other technological fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge;

(D) is a public or other nonprofit institution; and

(E) is accredited by a nationally recognized accrediting agency or association listed by the Commissioner for the purposes of this paragraph.

(5) The term "integrated school" means a school with a student body, containing a substantial proportion of children from educationally advantaged backgrounds, which is substantially representative of the minority group and nonminority group students population of the local educational agency in which it is located, and a faculty which is representative of the minority group and nonminority group population of the larger community in which it is located, or where the Commissioner determines that the local educational agency concerned is attempting to increase the proportions of minority group teachers, supervisors, and administrators in its employ, a faculty which is representative of the minority group and nonminority group faculty employed by the local educational agency.

(6) The term "local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts, or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools, or a combination of local educational agencies; and includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(7)(A) The term "minority group" refers to (i) persons who are Negro, American Indian, Spanish-surnamed American, Portuguese, or Oriental; and (ii) (except for the purposes of section 4), as determined by the Secretary, children who are from environments where the dominant language is other than English and who, as a result of limited English-speaking ability, are educationally deprived, and (B) the term "Spanish-surnamed American" includes persons of Mexican, Puerto Rican, Cuban, or Spanish origin or ancestry.

(8) The terms "minority group isolated school" and "minority group isolation" in reference to a school mean a school and condition, respectively, in which minority group children constitute more than 66⅔ per centum of the average daily membership of a school.

(9) The term "nonprofit" as applied to a school, agency, organization, or institution means a school, agency, organization, or institution owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(10) The term "secondary school" means a day or residential school which provides secondary education, as determined under State law, except that it does not include any education provided beyond grade 12.

(11) The term "Standard Metropolitan Statistical Area" means the area in and around a city of fifty thousand inhabitants or more as defined by the Office of Management and Budget.

(12) The term "State" means one of the fifty States or the District of Columbia.

(13) The term "State educational agency" means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law for this purpose.

### EVALUATIONS

SEC. 13. The Commissioner is authorized to reserve not in excess of 1 per centum of the sums appropriated under this Act for any fiscal year for the purposes of this section. From such reservation, the Commissioner is authorized to make grants to, and contracts with, institutions of higher education and private organizations, institutions, and agencies, including councils established pursuant to section 9(a)(2), for the purpose of evaluating specific programs and projects assisted under this Act.

### REPORTS

SEC. 14. The Commissioner shall make periodic detailed reports concerning his activities in connection with the program authorized by this Act and the program carried out with appropriations under the paragraph headed "Emergency School Assistance" in the Office of Education Appropriations Act, 1971 (Public Law 91-380), and the effectiveness of programs and projects assisted under this Act in achieving the purposes of this Act. Such reports shall contain such information as may be necessary to permit adequate evaluation of the programs authorized by this Act, and shall be submitted to the President and to the Committee on Labor and Public Welfare of the Senate and the Committee on Education and Labor of the House of Representatives. The first report submitted pursuant to this section shall be submitted no later than ninety days after the enactment of this Act. Subsequent reports shall be submitted no less often than four times annually.

### JOINT FUNDING

SEC. 15. Pursuant to regulations prescribed by the President, where funds are advanced by the Office of Education, and one or more other Federal agencies for any project or activity funded in whole or in part under this Act, any one of such Federal agencies may be designated to act for all in administering the funds advanced. In such cases, any such agency may waive any technical grant or contract requirement (as defined by regulations) which is inconsistent with the similar requirements of the administering agency or which the administering agency does not impose. Nothing in this section shall be construed to authorize (1) the use of any funds appropriated under this Act for any purpose not authorized herein, (2) a variance of any reservation or apportionment under section 3 or 4, or (3) waiver of any requirement set forth in sections 5, 6, 9, and 12(5).

### NATIONAL ADVISORY COUNCIL

SEC. 16. (a) There is hereby established a National Advisory Council on Equality of Educational Opportunity, consisting of fifteen members, at least one-half of whom shall be representatives of minority groups, appointed by the President, which shall—

(1) advise the Secretary with respect to the operation of the program authorized by this Act, including the preparation of regulations and the development of criteria for the approval of applications;

(2) review the operation of the program (A) with respect to its effectiveness in achieving its purposes as stated in section 2, and (B) with respect to the Commissioner's conduct in the administration of the program;

(3) meet not less than four times in the period during which the program is authorized, and submit, through the Secretary, to the Congress at least two interim reports, which reports shall include a statement of its activities and of any recommenations it may have with respect to the operation of the program; and

(4) not later than December 1, 1973, submit to the Congress a final report on the operation of the program.

(b) The Commissioner shall submit an estimate under the authority of section 401(c) and part C of the General Education Provisions Act to the Congress for the appropriations necessary for the Council created by subsection (a) to carry out its functions.

Mr. PUCINSKI. The committee will come to order.

We are starting today a series of hearings on two basic pieces of legislation pending before the General Subcommittee on Education-one of which had been approved by the House last year on December 21 by a vote of 2 to 1 and which then got bogged down in the Senate.

The first bill that is before the committee is H.R. 2266 introduced by our colleagues, Mr. Hawkins and Mr. Bell, a bill to assist school districts to meet special problems incident to desegregation and to the elimination, reduction, or prevention of racial isolation in elementary and secondary schools and, for other purposes.

Pending also before the committee is H.R. 3998 which is identical to H.R. 2266 and was introduced by Mr. Quie for himself, Mr. Erlenborn, Mr. Dellenback, Mr. Ashbrook, Mr. Steiger, and Mr. Hansen. Both H.R. 2266 and H.R. 3998 being identical are commonly known as the administration bills. This is the administration's proposal for dealing with problems incident to the integration of schools throughout the country.

This committee also has under consideration H.R. 4847 introduced by our colleague, Mr. Hawkins, for himself and Mr. Reid of New York. This bill is to provide financial assistance for the establishment and maintenance of stable, quality integrated education in elementary and secondary schools, to assist the school districts to overcome the adverse effects of minority group effects of isolation, and for other purposes.

The bill H.R. 4847 is patterned principally after the legislation introduced in the other body by Senator Mondale and is commonly referred to as the Mondale bill.

Now at the beginning of the 92d Congress the administration Emergency School Aid Act was introduced by Senator Javits in the Senate and by Congressmen Bell and Hawkins in the House. The Quality Integrated Education Act was introduced by Senator Mondale and by Congressmen Hawkins and Reid.

Although both bills encourage integration in the schools, they differ greatly in their approaches. The administration bill funds programs in school districts which are implementing integration plans, whether these plans are imposed by the courts or HEW or are adopted voluntarily.

Eighty percent of the funds are allotted to the States for grants by the Secretary of HEW to such school districts within the States. The Secretary may use the remaining 20 percent of the funds for special and demonstration programs.

The Mondale bill, on the other hand, funds model integrated schools throughout the country. These schools would be stable, of high quality, racially balanced, and have a socioeconomic mix of students.

I believe it is safe to suggest that the Mondale bill follows closely what is now being tried across the country in so-called magnet schools. The purpose, according to Senator Mondale, is to demonstrate that integration can work. The Mondale bill allots 40 to 45 percent of the funds for these model schools and allots the remaining funds for the following purposes: pilot programs in racially isolated schools 10–15 percent, education parks 10 percent, interdistrict cooperation 10 percent, discretionary funds for the Commissioner 10 percent, private groups 6 percent, evaluation 1 percent, integrated educational television 5 percent, and payment of attorney's fees 3 percent.

I might say to the committee that we are very privileged this morning to have before us two very distinguished spokesmen in the cause of better education in this country, Mrs. Ruby Martin who is here as head of the Washington Research Project Action Council. The Action Council has done substantial work in evaluating the method in which the original $75 million was spent by the administration in schools undergoing segregation.

We also have the very distinguished member of the National Association for Advancement of Colored People, Mr. Clarence Mitchell who is the NAACP's representative and spokesman here on the hill and whom we all admire for his candor and his excellent background and knowledge of the subject.

I think in fairness to the committee we ought to point out that both Mrs. Martin and Mr. Mitchell in testifying on the expenditures spent so far on the program of trying to help schools in this area are working with a program that was put together rather hurriedly last year by the administration with Scotch tape and rubber bands and paper clips and whatever other methods they could find to justify an appropriation of $150 million, subsequently cut to $75 million, to help these schools.

The program under which the administration—if I may refresh the committee's recollection—was one that was taken from five existing authorizations that had been unfunded.

Some of the money came out of title I ESEA. Some of the money came out of the Professions Development Act. Some of the money came out of title III and two other programs.

So that when the administration went to the other body with this proposal the authorization for this proposal in my judgment at that time was highly questionable and continues to be highly questionable.

It is interesting that the administration is not seeking any more funds under that route. I congratulate the administration for not using that route any further because it was a route that was to a great extent nondescript and led to the various criticisms that are properly being voiced against the expenditure of those funds.

It had been our hope when we put together the Emergency School Aid Act of 1970 and worked it through this committee that we could write into the legislation sufficient standards and sufficient safeguards to assure against the very abuses and shortcomings which the witnesses on this occasion and previous occasions have properly pointed out.

We labored very hard in this committee and we hammered out what we thought was a good bill that would have helped communities all over the country. It was a very difficult task of trying to give all children in this country a chance for a decent education. Against the great odds and under tremendous difficulty we did get our bill through the House by a vote of 2 to 1.

It was stalled in the Senate because as so frequently happens over there, there were apparently forces and issues at play that we would not tolerate in this body.

So if indeed witnesses cannot come before the committee today with a more comprehensive basis for evaluation of our program than the $75 million that was spent last year, the fault must lie squarely with the Senate.

The Senate had ample opportunity last year to act on this bill and this bill would have been funded and school districts all over the country today would be enjoying the kind of financial assistance that they need so desperately to help them bring about a more orderly process of bringing together the various youngsters of America.

As we begin these hearings today we are going to make another effort in this body to move a bill, but I must say after the experience that we had last year in the other body, and the inflexible position of the other body, that in this member's judgment it is going to take a Herculean effort to get this legislation through and I would say that the prospects are not too promising.

Apparently some of the Members of the other body have their own ideas on how to approach this program and they are not going to yield, at least they would not yield when we did have an opportunity to get the bill through and get this legislation through.

I think that the time has come when we ought to fix the blame squarely where it belongs. I am getting tired of these niceties of refering to the other Chamber, the other body. It is the Senate of the United States and they ought to assume the full responsibility when they fail to pass legislation.

All over this country today there are hundreds of thousands of children who ought to be benefiting from this program and there are thousands of school boards on the verge of absolute financial collapse.

This country has never suffered a greater crisis in education as it is suffering today.

All over this country teachers are being laid off in large numbers, children are being denied the kinds of education they need to fulfill their abilities. I have never seen the country in a greater crisis at the local level than we see now.

Here was a bill that could have made a significant contribution toward easing at least some of this crisis and we moved expeditiously in the House and I do not believe there is any room for any blame for what the House committee did or for what the House did itself.

So I say it is my hope as we begin these hearings today, that the other body is going to be a little more flexible in trying to put together a program that will serve the best interest of the children of this country.

Mr. Bell?

Mr. **Bell**. Mr. Chairman, I want to echo your comments about the other body and about this legislation. But today we are faced with two pieces of legislation, one of which, the Mondale bill, has absolutely no chance whatsoever of passing the House or the Senate.

I would like to see it passed. I would like to see many things done in civil rights. I have been a strong supporter of them in my past activities and still am. But we have to be practical and realistic about what can pass and what cannot.

The other bill I think has a good chance because of the fact that it did pass; it passed the House and died in the Senate as the chairman said.

The Mondale bill neither passed out of the subcommittee of the House nor out of any subcommittee of the Senate. Nor could it pass through the full committee of the House nor could it pass the House itself.

So I think this is what we have to realize, rather than to have the whole loaf which we might like to have, let us be reasonable and expect to get a half a loaf which is certainly better than nothing.

There is no reason to just quit and give up. So I think we have to realize what practically can be done in the House and in the Senate and work toward that, toward something that can be accomplished.

Certainly it won't be perfect but no legislation has ever passed the House or Senate that has been perfect. But we have a chance to pass some good civil rights legislation.

Let's realize this and let's pass something that is realistic and practical and can be put into law.

Mr. **Meeds**. I am looking forward to the testimony of the witnesses this morning and don't want to get into a hassle about the bill and the other body, but I would like to point out as I am sure my colleagues know that it takes two bodies to pass legislation and I don't think we ought to start out from the approach that we are all right and they are all wrong because we are never going to solve anything that way.

I think we have to start with the premise that we ought to consider this legislation objectively and hope that they consider it objectively and that we can both pass legislation dealing with this subject matter which will allow us to get together and reach the kind of compromise that might be necessary eventually to pass legislation in this field.

Mr. **Pucinski**. Mr. Peyser.

Mr. **Peyser**. No, sir.

Mr. **Hawkins**. Mr. Chairman, I don't know to whom these sermons were intended to be preached but as the author of two different bills in the committee I would hope that we maintain a fair-minded attitude about them until such time as we have a hearing on them and not prejudge them at this particular time.

I think all of you know that I worked very hard last year to get a bill through. I was not satisfied with the bill which we passed, to be very frank with you. It was my hope that we could get a bill in conference and in conference possibly work out a much better bill.

I was rather stunned when the bill which my colleague, Mr. Bell and I co-authored reached the floor and that apparently with administration support, the Steiger amendment was offered and adopted.

This was one of the issues that we had fought for. I know I had, that the prevailing funds which were being used for education should not be rated. I was surprised that the bill which we had authorized apparently with administration support was not passed and in fact the Steiger amendment was adopted.

I hope we will not have that same situation prevail this time. I think we should keep in mind the goal we are trying to achieve. I think that it may be a mistake to pass a bill merely to get a bill passed. Unless it actually achieves the principles of good quality education, it seems to me we will have failed in our effort.

So I hope we can work as diligently as we did last year and I personally intended to work for the strongest bill we can get. I do not buy the argument that it is impractical to get a certain bill passed. It has been my experience in my legislative background that you work for something that is good and do the best you can and I do not accept the argument that the Mondale bill is impractical any more than the bill which we passed last year is going to pass the Senate.

I hope the hearings will bring out some of the facts and I certainly intend to support the very strongest bill we can get out of this committee.

Mr. **Bell**. I want to congratulate my friend, Mr. Hawkins, for the effort he made on behalf of the bill last year. I certainly did not mean to imply by my comment that I was not in favor of a compromise. If we can get a compromise, that would be very effective, probably. But the point was we did not get a compromise from the other side on this. And we have to have a compromise to get any place on the bill.

But the same forces that brought the Steiger amendment in are at work. I opposed the Steiger amendment but these forces are still at work and we must consider them as a factor in what we are trying to do.

Mr. **Pucinski**. I did not intend my remarks to be a sermon because I am not a preacher but it was an affirmation of a fact.

Now it is true that my colleague from California, Mr. Hawkins, is going to have to be somewhat ambidextrous before the committee because he is sponsoring two bills and we will try to see if we cannot take the best out of both to proceed with the bill before this committee and take it to the floor.

But the fact remains and I think we have a right to be somewhat incensed, that we are here this morning on this legislation which should have been providing the necessary money to school districts and children all over America.

We are here now because of the complete and total inflexibility of the Senate. And let the record be very clear. We sent a bill to the Senate and we were willing to compromise. We were willing to meet in conference. We had the time and we could have done it and it was the Senate that said, "You are going to take our bill or nothing."

And when the day comes when the bicameral Congress has to operate that way, then government will come to a grinding halt.

So we are going to make every effort we can to report out a good bill here but when you look at the inflexibility of the other body it does seem like an exercise in futility.

We are pleased to have with us Mrs. Ruby Martin. I am sorry I failed to mention that Mrs. Marian Edelman is also here from the Washington Research Project Action Council.

Mrs. Edelman was nice enough to cancel a trip to Boston to be with us this morning. They are both accompanied by Mr. Dick Warden.

Now, Mr. Mitchell, I wonder if you would like to join the panel at the table and perhaps we can go through your testimony and then we can work as a panel the rest of the morning, if this is agreeable to the witnesses.

Would you ladies and gentlemen please come forward?

Mrs. Martin, we are indeed privileged and pleased to have so distinguished a spokesman as yourself before the committee this morning. We know you have done an extensive job of research on the program as it has enfolded so far.

The results of your research had figured prominently in the debate at the time that we had submitted this legislation to our colleagues in the full House and I am most grateful that you would take the time to be with us this morning to discuss some of the problems inherent to this legislation and perhaps some suggestion on how it can be improved.

So Mrs. Martin and Mrs. Edelman and Mr. Warden and Mr. Mitchell, we welcome you here.

Proceed as you wish.

(Mrs. Martin's prepared statement follows:)

### PREPARED STATEMENT OF MRS. RUBY G. MARTIN, WASHINGTON RESEARCH PROJECT

Mr. Chairman, my name is Mrs. Ruby G. Martin of the Washington Research Project. My associate, Mrs. Edelman, and I are appearing before your Subcommittee today to discuss two subjects: first, the evaluation of the so-called Emergency School Assistance Program which we and five other organizations conducted last fall; and second, the school desegregation assistance bills which this Subcommittee is now considering.

I shall address myself to our evaluation of the Emergency School Assistance Program, and Mrs. Edelman will discuss the substance of the bills.

Last November, the Washington Research Project and five other private organizations (American Friends Service Committee; Delta Ministry of the National Council of Churches; Lawyers' Committee for Civil Rights Under Law; Lawyer's Constitutional Defense Committee; and NAACP Legal Defense and Educational Fund, Inc.) concerned with the problems of race, education and poverty issued an evaluation of the first months of the administration of the Emergency School Assistance Program, which I shall refer to as ESAP. This program was made possible through a $75 million appropriation to assist in school desegregation. Our report was based on analysis of the proposals of more than 350 successful applicant school systems and upon on-site reviews of nearly 300 school systems receiving ESAP grants by attorneys and others experienced in school desegregation.

Our evaluation was thus two-fold. We analyzed the substance of the ESAP project applications. We also reviewed the performance of school districts under their desegregation plans in relation to constitutional responsibilities, requirements of Title VI of the Civil Rights Act of 1964 and the special civil rights safeguards spelled out in the ESAP appropriation legislation and the HEW Regulations establishing eligibility to participate in the program.

In conducting our evaluation, we first asked the Department of Health, Education and Welfare to make available all applications from school districts for which ESAP grants had been approved. This request was in early September. In response, we were given copies of 368 approved applications from school districts in 13 states. The 368 represented slightly more than 50 percent of the funds approved as of October 30, 1970, and 43 percent of the funds obligated by that date.

Monitors from the six participating organizations went to 467 school districts which were desegregating their systems under HEW or court-ordered plans. The monitors compiled reports describing the extent to which school systems were complying or failing to comply with their desegregation plans, the extent to which racially discriminatory practices persisted in the schools after desegregation, and other data relevant to an evaluation of the desegregation process. The monitoring effort was largely carried out between September 18 and September 27, 1970. Of the monitored districts, 295 had received ESAP grants by October 30, 1970.

The 467 school districts we monitored were scattered throughout 10 states. Each state was assigned a coordinator, a person with long experience in school desegregation. The state coordinators were responsible for conducting training sessions for monitors working within their states before they went into the field, and for general supervision of the monitors. We were particularly concerned about techniques for objective data collection, and emphasized the necessity to interview persons with different points of view within each community—blacks and whites, school administrators, principals, teachers, parents and students. In each case, monitors were instructed to seek an appointment with the school superintendent or his representative, and to attempt to obtain access to official school records of student faculty assignment.

Our review of grant proposals and visits to school districts led us to the conclusion that there were serious and widespread deficiencies in the administration of ESAP. Specifically, we found:

(1) Large numbers of grants had gone to districts which, at the time of our visits, were engaging in racial discrimination in violation of the Constitution, Title VI and the ESAP requirements. We found cases of segregation within schools, classrooms and other facilities; cases of segregation and discrimination in bus transportation; cases where faculties and staff had not been desegregated in accordance with applicable requirements; cases of discrimination in the dismissal and demotion of black teachers and principals; violations of approved student assignment plans, and cases of assistance by school systems to private segregated academies. Of the 295 monitored districts receiving ESAP grants, 179 were engaged in practices which, under the program Regulations, under language incorporated into the Appropriations Act, and under basic civil rights law should have rendered them ineligible for grants. In 87 other systems, we found sufficient evidence to consider the eligibility of the districts questionable. In only 29—less than 10 percent of those funded as of October 30—did we find no evidence of questionable practices.

(2) ESAP projects were approved even though the language of the applications indicated they were to support activities which implicitly or explicitly appeared racist in their conception. Other applications were for projects which would resegregate black students within "desegregated" schools.

(3) Substantial portions of the "emergency" desegregation funds were allocated not to deal with desegregation at all. Many of the approved applications indicated that funds would be used to meet the ordinary costs of running any school system—expenses such as hiring more school teachers and general teacher aides, custodial help, buying additional regular textbooks, and equipment, and repairing buildings—needs that desegregating districts have in common with other school systems throughout the United States.

(4) Grants were made to school districts which were not implementing terminal desegregation plans and therefore did not meet the initial condition for ESAP funds. (We note that HEW has in recent weeks moved to correct these situations.)

(5) In the apparent haste to get some funds to as many southern school districts as possible, ESAP money was dissipated in grants which in many cases appeared to be too small to deal comprehensively and effectively (as required by the Regulations) with the problems of desegregation.

(6) In sharp contrast to the hasty and haphazard way in which grants for school districts were approved, the significant provision of the ESAP Regulations authorizing community groups to receive grants under the program to lend their assistance to the desegregation process has been virtually ignored until about two weeks ago when the first checks were mailed to community groups. It should be pointed out that the school year is nearly ended, and the chances of a community group making meaningful contribution to the desegregation process during the current year are somewhat diminished.

(7) In many districts, the applications indicated the biracial advisory committees had not been constituted in accordance with the requirements of the Regulations.

(8) The funding priorities used by ESAP administrators have been distorted.

Our study indicated only a small portion of ESAP funds had gone for projects emphasizing student and community programs designed to improve race relations in desegregating districts.

(9) Perhaps most important of all, few of the approved ESAP project applications showed thoughtful planning by local school systems, effective guidance by Office of Education officials, or a genuine "emergency" situation created by school desegregation as a useful enforcement tool—the Title IV Unit has summarily rejected all or almost all of our conclusions based upon our analysis of 368 project applications. The Title IV Unit states that, "the misinterpretation placed on these projects was caused by the earlier request and delivery of copies of ESAP proposals that had corrected budgets but not corrected project descriptors. Therefore an examination of the descriptors in the projects were not representative of the actual program activities that were finally negotiated by program evaluators."

The Title IV Unit apparently is trying to say that although we did have copies of 368 approved project applications, we were not in a position to evaluate project approvals because we were not privy to subsequent negotiations.

In some communities, the Freedom of Information Act and other public disclosure requirements provide the only lever available to local citizens to demand and obtain information about federal programs. The statement by Title IV raises a serious question about the effectiveness of the Freedom of Information Act and requirements for public disclosure of approved applications if, in fact, the applications do not reflect the program or project to be implemented.

With respect to our study, the Title IV Unit was well aware that we were evaluating the ESAP and our request for copies of the applications was to facilitate that effort. For that reason, we are confident that the applications we received reflected what was actually funded, and we stand by the conclusions we reached after analyzing the applications.

Finally, we wish to reiterate the fact that our analysis and criticisms of the administration of the program were based upon study of 368 applications. The applications were the basis upon which funding decisions were made. The Title IV response is based upon reviews of project implementation. If their reviews accurately reflect what is happening, we are pleased to know things are not as bad as we had feared they would be. But what is happening now, months after the applications were filed and approved may have little resemblance to the intentions of the school districts as indicated in their applications, and the applications after all are the public documents upon which community people and others interested must depend for their information.

Mr. Chairman, I have given you a brief summary of our evaluation of the Emergency School Assistance Program. My colleague, Mrs. Edelman, will attempt now to relate our findings to the bills under consideration by your Subcommittee and to indicate our preference.

## STATEMENTS OF MRS. RUBY MARTIN AND MRS. MARIAN EDELMAN, WASHINGTON RESEARCH PROJECT ACTION COUNCIL, ACCOMPANIED BY DICK WARDEN AND CLARENCE MITCHELL, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Mrs. Martin. I hope our testimony is relevant in view of the remarks of the committee this morning.

Basically the research I want to talk about was conducted after the $75 million was put together by the paper clips and bandages and what have you which you mentioned.

My associate, Mrs. Edelman, and I are going to divide our testimony into two parts. I will discuss our evaluation, an evaluation which the Washington Research Project and five other organizations conducted of the emergency school assistance program.

Mrs. Edelman will discuss the bills that the subcommittee is considering.

The organizations that participated in the review are included in my testimony and there is no reason for me to list them now individually except to say each is concerned about problems of race, education and poverty. We cooperated this past fall in looking at the impact of the emergency school assistance program which I will refer to as ESAP.

Our report was based on onsite reviews of nearly 300 school districts that were receiving ESAP grants and a review of 350 applications that had been approved by the Office of Education.

We were looking for the performance of school districts receiving ESAP grants—performance with respect to title VI, the Constitution, and the specific civil rights safeguards written into the ESAP program regulations.

Second, we were looking at the substance of the ESAP proposals—what the school district intended to do with the money they received.

The specific procedures used in conducting our evaluation is spelled out in my testimony. We used uniform procedures. The individuals conducting the onsite reviews were lawyers and other persons with long experience in civil rights. We used uniform data collecting techniques.

I think I will go directly to our findings because it should be critical to this committee to know what we found after the emergency school assistance program was in operation.

Our findings are listed on page 3 of my statement. With your permission I would like to read them. Our review of grant proposals and visits to school districts led us to the conclusion that there were serious and widespread deficiencies in the administration of ESAP.

Specifically, we found: (1) Large numbers of grants had gone to districts which, at the time of our visits, were engaging in racial discrimination in violation of the Constitution, title VI and the ESAP requirements.

We found cases of segregation within schools, classrooms and other facilities; cases of segregation and discrimination in bus transportation; cases where faculties and staff had not been desegregated in accordance with applicable requirements; cases of discrimination in the dismissal and demotion of black teachers and principals; violations of approved student assignment plans, and cases of assistance by school systems to private segregated academies.

We list the specific number of districts we found in violation of the regulations, title VI and the Constitution.

We conclude that in only 29, less than 10 percent of the school districts we visited, did we find no evidence of questionable practices—practices which should have rendered them eligible to participate in ESAP.

Second, with respect to ESAP projects approved by the Office of Education, we found language in applications which indicated that the money would be used to support activities which were implicitly or explicitly racist in their concept.

Other applications were for projects which would resegregate black students within desegregation schools.

Third, we found substantial protions of the emergency desegregation funds were allocated not to deal with desegregation at all.

Many of the approved applications indicated that funds would be used to meet the ordinary costs of running any school system—expenses such as hiring more school teachers and general teacher aides, custodial help, buying additional regular textbooks, and equipment, and repairing buildings—needs that desegregating districts have in common with other school systems throughout the United States.

We are not suggesting that these are valid needs of school systems. Our concern is that this was an emergency program to deal with desegregation, and much of the funds have been for purposes with no relationship to desegregation.

Fourth, we found grants were made to school districts which were not implementing terminal desegregation plans and therefore did not meet the initial condition for ESAP participation.

Fifth, in the apparent haste to get some funds to as many southern school districts as possible, ESAP money was dissipated in grants which in many cases appeared to be too small to deal comprehensively and effectively.

In sharp contrast to the hasty and haphazard way in which grants for school districts were approved, the significant provision of the ESAP Regulations authorizing community groups to receive grants under the program to lend their assistance to the desegregation process had been virtually ignored until about 2 weeks ago when the first checks were mailed to community groups.

It should be pointed out that the school year is nearly ended, and the chances of a community group making a meaningful contribution to the desegregation process during the current year are considerably diminished.

In many districts, the applications indicated the biracial advisory committees had not been constituted in accordance with the requirements of the regulations.

The funding priorities used by ESAP administrators have been distorted. Our study indicated only a small protion of ESAP funds had gone for projects emphasizing student and community programs designed to improve race relations in desegregating districts.

Perhaps most important of all, few of the approved ESAP project applications showed thoughtful planning by local school systems, effective guidance by Office of Education officials, or a genuine "emergency" situation created by school desegregation.

Let me point out that our findings were disappointing but they were not entirely unexpected.

My associate, Mrs. Edelman, and a number of persons concerned with civil rights testified before the Senate subcommittee considering this matter last year that the time was too short to effectively use $150 million, or $75 million which was eventually appropriated.

Our warnings were not heeded in the administration of ESAP which is the forerunner of the bills before you today.

The grantmaking process at the Office of Education apparently operated on the assumption that each school district should define its own emergency.

There is nothing to build on. We have learned nothing from the ESAP experience from my point of view.

As you know, Mr. Chairman, HEW has reacted to our evaluation and we were provided with a copy of that response.

We are pleased to note that HEW found our report—to use the words of their response:

> A valuable enforcement tool both generally to confirm findings made by the Government enforcement officers and in many cases to draw enforcement attention to specific allegations in specific districts.

In other words, we think that is "governmentese" for saying what you found is correct and we have substantiated it by our own reviews. It was the intention of our report to draw these deficiencies to the attention of government.

Our reading of the HEW report leads us to believe that so far as compliance question is concerned the Office of Civil Rights has corroborated our general findings.

That part of HEW response dealing with the substance of the program, is quite a different story. It is defensive.

The title IV unit, in effect, is saying that almost all of our conclusions are based upon faulty interpretations of incomplete documents; that they gave us copies of documents where the "descriptors" were not complete.

I think I should point out to the subcommittee that in some communities the Public Information Act affords community people the only lever for finding out what uses are being made of Federal money.

If the Office of Education says to us that you did not receive actual copies of what school districts are doing it is our position that the Freedom of Information Act is meaningless.

If there are telephone conversations and other methods of negotiation not reflected in the application available to the community, we think that the Public Information Act is meaningless. The application should reflect what the districts are doing.

But with respect to our study, the Office of Education knew we were evaluating the program. They knew exactly why we wanted to look at the applications and we have every reason to believe that what we received from them actually reflected what they thought that the school districts were doing.

We stand confidently behind the civil rights compliance part of our report as well as the evaluation of the programs school districts indicated they were going to be engaged in.

Mr. Chairman, that is a brief summary of my testimony. It goes into more detail. I assume it will be printed in the record.

Mr. PUCINSKI. Thank you very much, Mrs. Martin for your excellent analysis.

I think we can make most progress this morning if we just move on to Mrs. Edelman and then to Mr. Mitchell and then open it up for questions if it is agreeable to the committee.

Mrs. EDELMAN. I don't want to seem impertinent but before my testimony I would like, if I may, to give a response to the Chairman's opening remarks and to answer Mr. Bell in some particulars because I do feel strongly on these issues.

First, Congressman Bell, I think you are right.

Mr. PUCINSKI. Mrs. Edelman, do you have a prepared statement?

Mrs. EDELMAN. I do. It is rather long and I will summarize it as best I can, but I want to make some initial comments.

(The statement referred to follows:)

## Statement of Marian Wright Edelman, Washington Research Project

Mr. Chairman, I appreciate this Subcommittee's invitation to appear today to discuss two bills, H.R. 2266 and H.R. 4847, as they relate to the problems of desegregation and racial isolation. My name is Marian Wright Edelman. Mrs. Martin and I are partners in the Washington Research Project.

Our evaluation of the $75 million appropriation for the Emergency School Assistance Program (hereafter ESAP), which Mrs. Martin has just discussed, leads us to be skeptical about the administration of any school desegregation assistance program. Our experience with federal assistance to education, particularly Title I of the Elementary and Secondary Education Act, and now ESAP, has shown that unless there is a clear understanding of the goals to be achieved, a well-developed mechanism for review of project applications and distribution of funds, a simultaneously established monitoring system with tough sanctions always applied when necessary, and an operational system of evaluation, the assistance is often wasted, misused and diverted for purposes not intended by Congress. We should therefore examine the two bills now before the Subcommittee in light of whether they meet these standards.

Secondly, no amount of money can substitute for decent, strong and consistent federal enforcement policies in the school desegregation area. One of the disturbing factors in this regard is the failure of this Administration to take strong and decisive action against pervasive inschool discrimination against black school children in so-called desegregated districts. While HEW finally issued its memorandum on minority faculty discrimination, it is prospective and too weak to be effective. Nor has HEW issued its promised memorandum setting forth specific directives regarding pupil discrimination and segregation. A few dollars to finance interracial student contact cannot overcome illegal barriers imposed or permitted by school districts in direct violation of federal law.

The need for federal legislative action which produces educational justice for the millions of children who are victims of racially isolated education is indisputable. The real issue is the degree to which such legislation directly results in quality integrated education. A commitment to quality integrated education must pervade both legislative mandate and administrative implementation. We all have a duty to see that we do not tolerate the misdirection of funds for compensatory education which results in continued racial isolation rather than less. We have a duty not to perpetuate schemes that smack of tokenism. We have a duty not to condone or comfort those who have for 17 years denied equal educational opportunity to students within their districts. We have a duty to prevent, through the construction of new schools, a continuation of the cycle of unjust neighborhood schools. We must be clear that what we are investing in is quality integrated education and that we are taking real steps to provide stable and lasting integrated educational experiences for all of the Nation's children.

Another consideration relative to quality integrated education embraces another look at the distorted issue of racial balancing as part of the process of desegregating schools. President Nixon in his desegregation message of March 24, 1970, spoke of "lowering artificial racial barriers in all aspects of American life," while at the same time stating that "in the case of genuine de facto segregation . . . school authorities are not constitutionally required to take any positive steps to correct the imbalance." [Emphasis added.] H.R. 19446 (the Nixon Administration's bill last fiscal year) and H.R. 2266 would disassociate racial balancing from desegregation efforts and confuse constitutionality with educational justice. Moreover, it is hardly positive leadership in a very difficult area. The only way to lower artificial barriers is to correct the imbalance (which has been artifically achieved), and thereby pave the way to quality integrated education. In tone and findings and purpose, H.R. 4847 takes a positive approach by recognizing that segregation and racial isolation, regardless of cause, hurt children. H.R. 4847 calls for quality integrated education rather than mere elimination of discrimination. This is an important point for it sets the standards for debate and the climate for greater achievement than in the past.

Judged against these principles, it is clear that neither bill represents the final answer to the question of what will be needed to eliminate racial isolation, regardless of cause, in the schools of America. What will, in fact, be essential to accomplish this important national objective is a compliance program requiring an end to racial isolation and with it the unequal educational opportunity which has traditionally accompanied it. Such an enforcement program will require, in addition, the authorization of substantial sums of federal assistance to help local school systems reorganize in order to bring about an end to racial isolation.

In my estimation, one of the bills before this Subcommittee, H.R. 4847, comes much closer to providing the initial steps for achieving the goals outlined above than does H.R. 2266. More specifically, taking three areas—comprehensiveness of approach, the substance of programs funded, and safeguards and procedures—H.R. 4847 is clearly the better bill.

While I will discuss safeguards more fully in a moment, I wish to say at this point that our experience with the ESAP has emphasized our concern about safeguards to prevent funding of districts discriminating against students and faculty in schools or systems which purport to be integrated. There is nothing so cynical as pouring money into schools for the purpose of achieving integration and at the same time allowing clearly discriminatory activities to take place within those schools. H.R. 4847 would exclude districts from funding which have engaged in discriminatory action after August 18, 1970, unless they go through a waiver procedure. The waiver procedure is more complicated if a district discriminated while receiving ESAP funds. I can think of no way to write any stronger legislative assurance that the ESAP experience will not happen again. While containing some safeguards written into the ESAP Regulations, H.R. 2266 does not incorporate such a waiver procedure.

I endorse the waiver procedure, Mr. Chairman, but I remain skeptical in spite of the strong safeguards contained in H.R. 4847. Let me tell you why. Few safeguards were written into the appropriations bill which funded the $75 million Emergency School Assistance Program, but the Regulations issued pursuant to that appropriation were quite strong. Both Mrs. Martin and myself, among others, were consulted in their development. And while we would have written them differently, we generally felt they were adequate to prevent most abuses in the spending of the $75 million. We were wrong. Regulations are meaningless if administering agencies do not adhere to them.

One way to avoid a repetition of this experience is to make it difficult for districts which have violated assurances in the past to come back for more money as the waiver provisions attempt to do. Another way is not to rely entirely upon federal authorities to assure compliance with the requirements of a school desegregation assistance program and related legislation. H.R. 4847 would earmark three percent of the authorized funds for reimbursement of attorneys' fees in successful lawsuits under the Act, Title I of the Elementary and Secondary Education Act, Title VI of the Civil Rights Act of 1964, and the equal protection clause of the Fourteenth Amendment. We enthusiastically endorse this provision without reservation.

In testimony before the Senate Subcommittee on Education, Commissioner Marland strongly opposed this provision. First, he argued that this would help throw the entire litigation burden in school desegregation into federal courts.

The Supreme Court has firmly established the principle that cases involving denial of constitutional rights are properly heard in federal courts. Moreover, the federal courts have been "burdened" with additional school litigation partially because of the Administration's decision to finish the dismantling of the dual school structure through the courts rather than through administrative action under Title VI of the Civil Rights Act of 1964. I think the Commissioner is correct to raise the issue of limiting this provision to just federal courts—I would extend it to state courts as well—but remind him that there are few school suits in the North and West in federal or state courts because the costs are prohibitive. Organizations such as the NAACP Legal Defense Fund and the Lawyers Constitutional Defense Committee have spent hundreds of thousands of dollars on several hundred Southern school suits, but they do not begin to have the resources necessary to undertake many Northern school suits.

Commissioner Marland also raised questions about what is meant by "reasonable" attorney fees and "costs not otherwise reimbursed." Virtually the same language regarding reasonable attorney fees appears in both Title II (public accommodations) and Title VII (employment discrimination) of the 1964 Civil Rights Act. The courts have had no difficulty in determining the appropriate fees and costs in such cases after looking to the minimum fee schedules of local bar associations and other such pertinent materials for guidance. "Costs not otherwise reimbursed" are easily identifiable and include such expenses as extensive depositions, copying charges, consultation fees and travel costs. The Commissioner also ignored the very successful experience under the federal Criminal Justice Act by which the Administrative Office of the United States Courts pays attorneys who have represented indigent persons charged with federal crimes.

Commissioner Marland further asserted that the attorney fees provision would "tend to discourage negotiation and settlement of complaints" since the defendants would no longer be liable for the plaintiff's counsel fees "as he may be under existing law." However, our research has found that plaintiffs are awarded fees in school desegregation cases only in exceptional circumstances. In the ordinary cases, the courts have refused to award fees at all. I have prepared a brief legal memorandum on attorney fees in school desegregation cases for this Subcommittee's consideration.

Rather than discouraging negotiation, the counsel fees provision of H.R. 4847 will mean that many school officials will have to negotiate in good faith with local parents and citizens, since for the first time black persons and other minorities will have available private counsel with the resources to represent them in court properly and effectively.

Finally, the Commissioner misstated the question by asking, "Would $45 million, or any other sum, be better [Emphasis added] spent on enforcing anti-discrimination laws with respect to the schools than it would be on enforcing such laws with respect to housing, * * * 'legal services,' * * * etc.?" Guaranteeing constitutional rights should be the highest priority of all branches of government. Poor and minority citizens should not have to choose between non-discriminatory schooling, housing, or other services that other citizens are entitled to. None of the agencies—HEW, HUD, or OEO— have sought adequate enforcement funds. Rather than question whether $45 million should be authorized to help end school segregation, the Commissioner should be seeking more funds for this purpose and encouraging his own agency and others to seek budget increases to better enforce anti-discrimination laws. All of these things should be done simultaneously. It is not and should not be an either/or proposition as the Commissioner tries to make it. If we have to draw priorities, let us do so as regards defense spending and not among already grossly underfunded domestic programs.

### COMPREHENSIVENESS OF APPROACH

The problems of racial isolation and equal educational opportunity are national in scope. As Secretary Richardson pointed out in January, there is now a higher percentage of students in non-minority schools in the South than in the North. This represents some progress, at least in the South. But it is hardly grounds for rejoicing that 17 years after *Brown*, only 38 percent of black children in the Deep South and 28 percent of the black children in the North and West are in majority non-minority schools. It is time for all of us who have concentrated on desegregation efforts in the South to realize that school desegregation is a national problem. We must move away from just "dismantling dual school structures" (since, in the South, the Justice Department and some lower courts have condoned continued existence of racially identifiable schools in formerly dual systems) and move toward the establishment of integrated schools with innovative educational programs.

We must approach the problem of racial isolation comprehensively. H.R. 4847 contains a comprehensive approach. It says segregated education is bad wherever it is and whatever its cause and sets as a goal quality integrated schools. The Administration bill does not set a standard of integration. Indeed it perpetuates an unnecessary distinction by categorizing the types of districts for which assistance will be available. For example, school systems which are desegregating under court orders or Title VI of the Civil Rights Act of 1964, regardless of whether there is real integration occurring in the schools of such districts, are eligible for assistance. Then it makes eligible districts which are reducing racial isolation in their schools without specifying what "reducing" means in terms of integration.

H.R. 4847 is more positive and therefore will be more effective in several important ways.

*(1) Definition of "integration."*

H.R. 4847 defines an integrated school as one containing both educationally advantaged and educationally disadvantaged as well as minority and non-minority students. It takes into account the educational advantage of economic diversity as a key element in successful integration. President Nixon himself has reiterated this principal conclusion of the Coleman Report when he stated last year:

> ". . . in order for the positive benefits of integration to be achieved, the school must have a majority of children from environments that encourage learning—recognizing again that the key factor is not race but the kind of home that the child comes from."

The Administration bill, on the other hand, does not speak in terms of integration or integrated schools at all. In fact, the two paragraphs defining those eligible districts to which I assume most of the money will be directed—districts with court order or Title VI approved plans—mention only the desegregation of schools. Since "desegregation" is not defined for the purposes of this Act, H.R. 2266 leaves it up to the courts and Title VI to define desegregation. It was the courts in Shreveport, Louisiana, for example, and HEW Title VI compliance personnel in Columbia, South Carolina, for another example, which, in formerly dual systems, have defined desegregation to mean the continued existence of 12 all-black or nearly all-black schools in each of these districts. Furthermore, in court and Title VI approved desegregation plans, there is frequently little consideration of the educational background of the students who are reassigned. This often means that when schools are integrated, poor blacks and poor whites are assigned to the same facilities. In such circumstances, the educational advantages of desegregation are less likely to materialize. The racial and economic integration as provided in H.R. 4847 would not only produce integration but improve educational quality as well.

In addition, under H.R. 2266 school districts can receive funds "to prevent racial isolation reasonably likely to occur" in a school with a few as ten percent minority students. I assume this provision is meant to prevent "tipping," but it would seem there is little danger of that with as few as ten percent minority enrollment in schools.

In his Senate testimony, Commissioner Marland criticized the provision of the alternative to the Administration bill for not providing a district-wide approach. However, it is only in the court and Title VI approved desegregation plan districts (which are found almost entirely in the South) that system-wide consideration is a factor under the Administration's bill. Even then, the only systemwide feature of the Administration bill is the fact that it declares eligible all "desegregating" districts. H.R. 2266 would not in and of itself produce desegregation; it would simply provide funds to "desegregrating" districts, not based upon performance in terms of integration, but because they happened to be under court orders or Title VI of the Civil Rights Act of 1964. In other districts, its approach is not systemwide.

In summary, H.R. 2266 and H.R. 4847 both would permit funding of school districts containing both integregated and segregated schools. But H.R. 4847 would provide funds only for use in meaningfully (as defined) integrated schools.

### (2) *Discourages tokenism.*

Under H.R. 4847, local educational agencies must establish or maintain stable, quality, integrated schools in order to receive assistance under the Act. But under H.R. 2266, a district may be funded if it reduces to an undefined level minority group isolation in one or more minority group isolated schools or if it reduces, again to an undefined level, the total number of minority group children in its isolated schools. This invites tokenism. It would permit funding of a district which moves a handful of minority group students into schools which remain overwhelmingly non-minority.

### (3) *Requires both student and faculty integration.*

H.R. 2266 authorizes funding of districts for desegregating its faculties without necessarily integrating or even desegregating its student bodies. We assume the authors of H.R. 2266 did not intend this. Moreover, the language of Section 8(10) would appear to preclude the voluntary integration of faculties under the Act, even though President Nixon himself enunciated a policy of complete faculty integration in his March 24, 1970, statement on school desegregation. Worse, the standards for faculty desegregation announced in the *Singleton* case and endorsed by the President and Administration are undercut in H.R. 2266.

### (4) *Assures adequate concentration of funds.*

The Administration bill has no provisions to prevent the spreading of funds thinly and thus ineffectively. H.R. 4847 requires that programs funded must "involve an additional expenditure per pupil to be served . . . of sufficient magnitude to provide reasonable assurance that the desired educational impact will be achieved."

### (5) *Provides for independent programs sponsored by private, non-profit groups.*

Under H.R. 4847, six percent of the funds appropriated is earmarked for projects submitted by private, non-profit groups to promote equality of educational opportunity. No money is earmarked under H.R. 2266. And under the Administration's bill it appears that private groups can only be funded where the local district has also applied for funding. That would exclude groups with good proposals in districts where officials have turned their backs on promoting integration and where private action is needed more than ever.

(6) *Authorizes a standard for interdistrict cooperation.*

It is quite clear that in order to completely integrate the majority of the large urban school districts in this country, interdistrict cooperation will be necessary. H.R. 4847 recognizes this fact and sets aside ten percent of the authorized funds as an incentive for combined urban-suburban efforts in establishing integrated schools. While the bill does set forth a standard of integration to be achieved in such efforts, it is much too low and we urge a maximum variation of 20 percent. H.R. 2266 authorizes interdistrict cooperation, but it sets no standard for the integration to be accomplished, nor does it earmark funds for this purpose.

(7) *Provides for educational parks.*

One of the most innovative and promising means of reducing minority group isolation in metropolitan areas may be the development of educational parks. While several big city systems have explored this possibility, sufficient funds towards their construction have been unavailable. H.R. 4847 would set aside ten percent of the funds for the development of model integrated educational parks. It would thus provide a start toward getting these educational innovations established. From this could come useful lessons to be applied in future efforts to integrate urban school systems in all parts of the country. The Administration bill has no comparable proposal.

(8) *Provides for integrated children's television programs.*

The problems of racial and ethnic divisiveness in this country will never be overcome until minority and non-minority groups learn more about each other. H.R. 4847 would attempt to do something about this understanding gap. It would set aside five percent of the funds authorized for the "development and production of integrated children's television programs of cognitive and affective educational value."

(9) *Limits the percentage of discretionary funds.*

H.R. 2266 would give the Secretary 20 percent in discretionary funds while H.R. 4847 would limit discretionary funds for the Commissioner to ten percent. Commissioner Marland in testimony before the Senate Subcommittee on Education stated that "the Secretary may use these funds [the 20 percent discretionary funds] to support model and demonstration programs of national significance"—model programs similar to those funded under H.R. 4847, he later said. If it is the Administration's intention to fund such model programs, why did they not spell it out in their proposed legislation with appropriate requirements for effectiveness as in H.R. 4847?

(10) *Funds pilot projects to improve the academic achievement of isolated minority group children.*

H.R. 4847 would earmark funds "for unusually promising pilot programs or projects designed to overcome the adverse effects of minority group isolation by improving the academic achievement of children in one or more minority group isolated schools." While I feel that integration is the best way "to overcome the adverse effects of minority group isolation," I am not at all convinced that such integration will be completely achieved before another generation of minority group children are relegated to educational and, therefore, economic and social inferiority. We must learn, therefore, how to teach isolated educationally disadvantaged children more effectively in the immediate future.

### AUTHORIZED ACTIVITIES

Mr. Chairman, at the heart of the bills before your Subcommittee is the substance of the programs to be funded. In testimony before a Senate subcommittee last year on a bill almost identical to H.R. 2266, I expressed concern about the vagueness of the bill's program proposals and outlined in some detail the type of proposals I thought should be authorized.

While I find no substantial change in the Administration's bill's list of authorized activities, H.R. 4847 addresses itself specifically and exclusively to programs leading toward the achievement of integrated schools and equal educational opportunity. Most importantly, H.R. 4847 carefully defines and limits activities which may be funded, while H.R. 2266 fails to limit activities for which funds may be received, specifically authorizing as a catch-all "other specially designed programs or projects which meet the purpose of this Act."

Other positive limiting provisions found in H.R. 4847 but absent in H.R. 2266 include authority for:

(1) Development of new curricula and instructional methods, specifically including instruction in the language and cultural heritage of minority groups.

(2) Remedial services, beyond those provided in the regular school program, including student-to-student tutoring. H.R. 2266 provides for funding programs for the intellectually gifted and talented. What has this to do with desegregation? Does it encourage testing and tracking which will result in further isolation of children. In all remedial services, I would hope that care is taken to render them supplemental to normal school activities in order not to further separate children during the school day.

(3) Guidance and counseling services beyond those provided under the regular school program designed to promote mutual understanding.

H.R. 2266 funds "comprehensive guidance, counseling, and other personal services." Does not this encourage applications for general guidance programs little related to integration.

(4) The hiring of teacher aides, requiring specifically that in recruiting such aides preference be given to parents of children attending schools affected by the Act.

I oppose use of desegregation funds for physical improvements (other than educational parks, magnet schools, *i.e.*, educational innovations). If such provisions are deemed essential by the Congress, I would urge that a strict limitation, like ten percent, be set which H.R. 4847 does and H.R. 2266 does not.

### SAFEGUARDS AND PROCEDURES

Mr. Chairman, as I mentioned earlier, we are very concerned about the effectiveness of safeguards against abuse and provisions requiring accountability. H.R. 4847 and H.R. 2266, to some extent, have adopted the safeguards similar to those which were contained in the Regulations developed pursuant to the appropriation of the $75 million last year for the Emergency School Assistance Program. These safeguards, in strengthened form, declare ineligible any district which has assisted a segregation academy, discriminated against faculty members, or engaged in in-school or in-class segregation. H.R. 2266 weakens the in-school segregation safeguard by allowing testing and other procedures as long as resulting isolation is not discriminatory. Minority group isolation within schools, no matter what its cause, is harmful and demeaning to students. And it is difficult to prove discriminatory intent in the use of tests, though their cultural bias has often been attested to.

H.R. 4847 has additional safeguards prohibiting the limitation of "curricular or extracurricular activities . . . in order to avoid the participation of minority group students," and providing for a waiver of ineligibility if a district submits certain information and assurances to the Secretary—a waiver is much more difficult to obtain if the district engaged in the illegal behavior while receiving ESAP assistance.

Although we may be skeptical about the success of even the legislative safeguards of H.R. 4847 in preventing abuses, we remain hopeful. But I do have one question. How will a waiver determination be made under H.R. 4847 that a district has engaged in illegal activity? HEW has negotiated some ESAP districts into compliance, but they were out of compliance when they first received ESAP funds. Would such districts have to go through the ESAP waiver procedure? It is clear to us with respect to the ESAP that federal compliance enforcement has left something to be desired. As I indicated earler, we wholeheartedly endorse provision in H.R. 4847 for reimbursement of attorneys' fees in successful education lawsuits to preclude the necessity of relying entirely upon federal compliance enforcement.

Another weak aspect of the Administration bill is the total absence of accountability provisions. There are no provisions for parent, teacher, and student participation in the development and implementation of projects funded under the Act, nor is there a requirement for public disclosure by school officials of the provisions of applications before or during implementation. By contrast, H.R. 4847 requires open hearings at the local level and biracial committees composed at least half of parents to assure participation by parents in the development and implementation of integration projects. It requires full public disclosure including information relating to educational achievement of children in all schools of the district.

An unclear provision in H.R. 2266 is the acceptance of "free choice" as a method of desegregation if the Secretary determines that this method will achieve the complete elimination of a dual school system. I do not know why this provision is in the bill, unless by excluding reference to de facto segregated systems, it is approving the use of freedom of choice as a method of reducing minority group isolation in one or more schools which are then eligible for funding under this Act. This provision should be stricken; to the best of my knowledge freedom of choice plans have rarely, if ever, resulted in a desegregated school system.

Finally, under H.R. 2266, in states where the state education agency is prohibited from aiding private schools or where a local district refuses to allow private school children and teachers to participate in its program, the Secretary may make direct grants to private schools. Presumably this provision is directed toward parochial schools and other long established private schools and not the newer "segregation academies;" however, this is not clearly specified and leaves room for abuse. Also, there seem to be no requirements that these schools directly participate in the reduction of minority group isolation through desegregation of themselves. And it is questionable the role these students and teachers can play in desegregating public schools.

Mr. Chairman, we strongly endorse H.R. 4847. While certainly not the final answer to solving the problems of segregated or racially isolated education in this country, it will lay a foundation upon which we can build in integrating and upgrading the quality of education in the schools of America.

What will be needed in the long run, Mr. Chairman, is a national compliance program under which school districts are required to integrate their schools, whether they are de jure or de facto segregated, over a specified period of years and with adequate financial and technical assistance. Short of such a national compliance program, we support the proposal of H.R. 4847 as an important move in that direction.

Finally, Mr. Chairman, I respectfully wish to suggest a few strengthening amendments to the existing provisions of H.R. 4847 which we hope would be added by the Subcommittee.

(1) The highest priority under the bill should be assigned to funding school districts which integrate all schools within the system to meet the standard spelled out in the definition of integrated schools in H.R. 4847.

(2) If the program should be renewed beyond the two years for which funding is requested in this bill, I would add a requirement that a school district must increase at least by one each year the number of integrated school projects funded under this Act, and that they be automatically assured of an increase of funds for the new students involved at least equal to the per pupil expenditure of schools already participating in this program. Such a requirement builds a progressive and continuing financial incentive to integrate schools.

(3) I would omit the 1,000 student population minimum size requirement for a a school district's eligibility but retain the requirement that the district be made up of at least 20 percent minority group children until the 3,000 student population level is reached. With the 1,000 student poulation requirement, small, isolated, rural districts in Texas, Oklahoma, and Arkansas and elsewhere would be excluded from funding. These districts probably should be consolidated with neighboring districts, but it would be unfair to penalize them without penalizing their neighboring and larger districts which may well be refusing to take them in.

Our review of districts which participated in the Emergency School Assistance Program has convinced us of the need for more careful monitoring of recipients for violation of civil rights requirements and program regulations. This will be true of any school desegration or integration assistance bill passed by Congress.

(4) If this Subcommittee should decide to mark up a bill containing assistance for desegregating school districts without a standard of integration such as that in H.R. 4847, we recommend that you include an amendment along the lines of a proposal offered last year by Congressman Reid to the school desegregation assistance bill then under consideration on the House floor. His amendment would have established a procedure under which an aggrieved party—a parent or teacher, for example—could file a complaint with respect to an alleged violation of the school desegregation assistance measure or Title VI of the Civil Rights Act of 1964. Within a specified period of time—say, 15 days—the Secretary would investigate the complaint. If he found probable cause, he would immediately suspend further assistance to the recipient district and hold a formal hearing. If the hearing determined that the complaint was justified, assistance would be terminated. If not, assistance would be resumed. Such a provision would not meet our concerns about the lack of an integration standard in districts which may be desegregating under ineffective court orders or Title VI plans. But, under a complaint procedure such as that suggested by Congressman Reid, there would be some check against discrimination or violations of program regulations—problems which we found were widespread in the Emergency School Assistance Program.

(5) In addition, we believe that the Subcommittee should include a provision requiring pre-grant reviews by HEW to assure that desegregating recipient districts particularly are complying with the terms of their court-ordered or Title VI school desegregation plans before they begin receiving assistance under the legislation you are now considering.

Mr. Chairman, we wish to submit for the hearing record, along with our prepared statements, the memorandum to which I referred earlier elaborating upon our testimony with respect to reimbursement of attorney fees. We appreciate your interest in our testimony and would welcome any questions you may direct to us.

## COUNSEL FEES IN SCHOOL DESEGREGATION CASES

Traditionally American courts have not awarded attorneys fees to the prevailing party in litigation. *Mills* v. *Electric Auto-life Co.*, 396 U.S. 375, 391 (1970); *Williams* v. *Kimbraugh*, 415 F.2d 874 (5 Cir. 1969), *cert. denied* 396 U.S. 1061 (1969). "Their award necessarily requires a permitting statute, a contractual obligation, or an equitable discretion in the trial court." *Williams* v. *Kimbraugh*, *supra* 415 F.2d at 875.

No statute grants attorneys fees in school desegregation cases. *Kemp* v. *Beasley*, 352 F. 2d 14, 23 (8 Cir. 1965).[1] Of course there is no contractual basis for such awards in these cases. And courts in school cases have exercised their equitable discretion to grant attorneys fees only in rare and exceptional circumstances:

> "It is only in the extraordinary case that such an award of attorneys fees is requisite . . . Attorneys fees are appropriate only when it is found that the bringing of the action should have been unnecessary and was compelled by the school board's unreasonable, obdurate obstinacy."

*Kemp* v. *Beasley*, 352 F.2d 14, 23 (8 Cir. 1965); *Williams* v. *Kimbraugh*, 415 F. 2d 874, 875 (5 Cir. 1969), *cert. denied* 396 U.S. 1061 (1969).

*Bradley* v. *School Board of City of Richmond*, 345 F.2d 310, 321 (4 Cir. 1965).[2]

Mrs. EDELMAN. The first is the need for all of us to get behind the practical bill, a bill we can pass. I would like to say that, as a lawyer, I tend to reject that at the outset. I think our real and particularly my role as an advocate who spends their full time in civil rights work has the obligation to tell this committee and other committees and the country what is needed and to keep in mind the goals that are essential if we are going to have quality integrated education in this country.

Mr. BELL. Even when there is no chance of passing it?

Mrs. EDELMAN. We don't want a bill just to get a bill. I am not sure something is always better than nothing.

Mr. BELL. You believe in a whole loaf or nothing?

Mrs. EDELMAN. I think it is important to tell you what is important to achieve and what is necessary, and then hope this committee will come as near to it as they can, but not to start off with the lowest common denominator.

I am not a practical politician.

The second point is I am not unhappy to be here this morning, Mr. Chairman. And I am not unhappy that the bill did not pass last session because I really am deeply concerned about establishing a goal of quality integrated education in this country. And to do that is going to require the utmost deliberation and the utmost care and utmost scrutiny of any legislation we pass, because when we pass a bill for desegregation of schools we are going to be held accountable for what that money accomplishes. I don't want to have one billion-five come forth for desegregation and several years later when we are still not having desegregated schools in this country saying, "What happened? We appropriated all this money."

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[1] The Civil Rights Act of 1964, which expressly allows counsel fees in public accommodation and employment discrimination cases, does not apply in the school desegregation cases:

> "The plaintiffs' claim for attorneys fees is a matter that rests in the discretion of the trial judge. They cite in support of their claim the Civil Rights Act of 1964 which specifically allows attorneys' fees in cases filed to redress discrimination in Public Accommodation actions. This Act provides no legal basis for attorneys fees in school desegregation cases. Congress by specifically authorizing attorneys' fees in Public Accommodation cases and not making allowance in school desegregation cases clearly indicated that insofar as the Civil Rights Act is concerned, it does not authorize the sanction of legal fees in this type of action."

[2] Accord: *Rogers* v. *Paul*, 345 F.2d 117, 125 (8 Cir. 1965); *Clark* v. *Board of Education of Little Rock*, 319 F. 2d 661, 670–671 (8 Cir. 1966); *Jackson* v. *Marvell School District No. 22*, 389 F.2d 740, 747 (8 Cir. 1968).

In that sense I think we have an obligation to talk and deliberate and analyze and write the strongest possible bills with the strongest possible goals. With that I will go into my testimony.

Our evaluation of $75 million appropriation for the emergency school assistance program, hereafter called ESAP, which Mrs. Martin has just discussed, leads us to be skeptical about the administration of any school desegregation assistance program. Our experience with Federal assistance to education, particularly title I of the Elementary and Secondary Education Act, and now ESAP, has shown that unless there is a clear understanding of the goals to be achieved, a well-developed mechanism for review of project applications and distribution of funds, a simultaneously established monitoring system with tough sanctions always applied when necessary, and an operational system of evaluation, the assistance is often wasted, misused and diverted for purposes not intended by Congress. We should therefore examine the two bills now before the subcommittee in light of whether they meet these standards.

Secondly, no amount of money can substitute for decent, strong and consistent Federal enforcement policies in the school desegregation area. One of the disturbing factors in this regard is the failure of this administration to take strong and decisive action against pervasive in-school discrimination against black school children in so-called desegregated districts.

While HEW finally issued its memorandum on minority faculty discrimination, it is prospective and too weak to be effective. Nor has HEW issued its promised memorandum setting forth specific directives regarding pupil discrimination and segregation. A few dollars to finance interracial student contact cannot overcome illegal barriers imposed or permitted by school districts in direct violation of Federal law.

The need for Federal legislative action which produces educational justice for the millions of children who are victims of racially isolated education is indisputable. The real issue is the degree to which such legislation directly results in quality integrated education. A commitment to quality integrated education must pervade both legislative mandate and administrative implementation. We all have a duty to see that we do not tolerate the misdirection of funds for compensatory education which results in continued racial isolation rather than less. We have a duty not to perpetuate schemes that smack of tokenism. We have a duty not to condone or comfort those who have for 17 years denied equal educational opportunity to students within their districts. We have a duty to prevent, through the construction of new schools, a continuation of the cycle of unjust neighborhood schools.

We must be clear that what we are investing in is quality integrated education, and that we are taking real steps to provide stable and lasting integrated educational experience for all of the Nation's children.

H.R. 19446, the Nixon administration's bill last fiscal year, and H.R. 2266 would disassociate racial balancing from desegregation efforts and confuse constitutionality with educational justice. Moreover, it is hardly positive leadership in a very difficult area. The only way to lower artificial barriers is to correct the imbalance, which has been artificially achieved, and thereby pave the way to quality integrated education.

In tone and findings and purpose H.R. 4847 takes a positive approach by recognizing the segregation and racial isolation, regardless of cause, hurt children. H.R. 4847 calls for quality integrated education rather than mere elimination of discrimination. This is an important point for it sets the standards for debate and the climate for greater achievement than in the past.

Judged against these principles, it is clear that neither bill represents the final answer to the question of what will be needed to eliminate racial isolation, regardless of cause, in the schools of America. What will, in fact, be essential to accomplish this important national objective is a compliance program requiring an end to racial isolation and with it the unequal educational opportunity which has traditionally accompanied it. Such an enforcement program will require, in addition, the authorization of substantial sums of Federal assistance to help local school systems reorganize in order to bring about an end to racial isolation.

In my estimation, one of the bills before this subcommittee, H.R. 4847, comes much closer to providing the initial steps for achieving the goals outlined above than does H.R. 2266. More specifically, taking three areas—comprehensiveness of approach, the substance of programs funded, and safeguards and procedures—H.R. 4847 is clearly the better bill.

While I will discuss safeguards more fully in a moment, I wish to say at this point that our experience with the ESAP has emphasized our concern about safeguards to prevent funding of districts discriminating against students and faculty in schools or systems which purport to be integrated. There is nothing so cynical as pouring money into schools for the purpose of achieving integration and at the same time allowing clearly discriminatory activities to take place within those schools. H.R. 4847 would exclude districts from funding which have engaged in discriminatory action after August 18, 1970, unless they go through a waiver procedure. The waiver procedure is more complicated if a district discriminated while receiving ESAP funds. I can think of no way to write any stronger legislative assurance that the ESAP experience will not happen again. While containing some safeguards written into the ESAP regulations, H.R. 2266 does not incorporate such a waiver procedure.

I endorse the waiver procedure, Mr. Chairman, but I remain skeptical in spite of the strong safeguards contained in H.R. 4847. Let me tell you why. Few safeguards were written into the appropriations bill which funded the $75 million emergency school assistance program, but the regulations issued pursuant to that appropriation were quite strong. Both Mrs. Martin and myself, among others, were consulted in their development. And while we would have written them differently, we generally felt they were adequate to prevent most abuses in the spending of the $75 million. We were wrong. Regulations are meaningless if administering agencies do not adhere to them.

One way to avoid a repetition of this experience is to make it difficult for districts which have violated assurances in the past to come back for more money as the waiver provisions attempt to do. Another way is not to rely entirely upon Federal authorities to assure compliance with the requirements of a school desegration assistance program and related legislation. H.R. 4847 would earmark 3 percent of the authorized funds for reimbursement of attorneys' fees in successful lawsuits under the act, title I of the Elementary and Secondary

Education Act, title VI of the Civil Rights Act of 1964, and the equal protection clause of the 14th amendment. We enthusiastically endorse this provision without reservation.

In testimony before the Senate Subcommittee on Education, Commissioner Marland strongly opposed this provision. First, he argued that this would help throw the entire litigation burden in school desegregation into Federal courts.

We disagree. The Supreme Court has firmly established the principle that cases involving denial of constitutional rights are properly heard in Federal courts.

Mr. PUCINSKI. I might point out to our colleagues, we tried to explain at the beginning of the hearings the difference between the bills and the bills that are here. There is a statement you have on the difference between the Hawkins bill No. 1 and the Hawkins bill No. 2.

H.R. 4847 is the counterpart of the Mondale bill.

Mrs. EDELMAN. Moreover, the Federal courts have been burdened with additional school litigation partially because of the administration's decision to finish the dismantling of the dual school structure through the courts rather than through administrative action under title VI of the Civil Rights Act of 1964. I think the Commissioner is correct to raise the issue of limiting this provision to just Federal courts—I would extend it to state courts as well—but remind him that there are few school suits in the North and West in Federal or State courts because the costs are prohibitive.

Organizations such as the NAACP Legal Defense Fund and the Lawyers Constitutional Defense Committee have spent hundreds of thousands of dollars on several hundred southern school suits, but they do not begin to have the resources necessary to undertake many northern school suits.

Commissioner Marland also raised questions about what is meant by "reasonable attorney fees" and "cost not otherwise reimbursed." Virtually the same language regarding reasonable attorney fees appears in both title II and title VII of the 1964 Civil Rights Act. The courts have had no difficulty in determining the appropriate fees and costs in such cases after looking to the minimum fee schedules of local bar associations and other such pertinent materials for evidence. "Costs not otherwise reimbursed" are easily identifiable and include such expenses as extensive depositions, copying charges, consultation fees and travel costs. The Commissioner also ignored the very successful experience under the Federal Criminal Justice Act by which the Administrative Office of the U.S. Courts pays attorneys who have represented indigent persons charged with federal crimes.

Commissioner Marland further asserted that the attorney fees provision would "tend to discourage negotiation and settlement of complaints" since the defendants would no longer be liable for the plaintiff's counsel fees "as he may be under existing law." However, our research has found that plaintiffs are awarded fees in school desegregation cases only in exceptional circumstances. In the ordinary cases, the courts have refused to award fees at all. I have prepared a brief legal memorandum on attorney fees in school desegregation cases for this subcommittee's consideration.

Rather than discouraging negotiation, the counsel fees provision of H.R. 4847 will mean that many school officials will have to negotiate in good faith with local parents and citizens, since for the first time black persons and other minorities will have available private counsel with the resources to represent them in court properly and effectively.

*Comprehensiveness of approach*

The problems of racial isolation and equal educational opportunity are national in scope. As Secretary Richardson pointed out in January, there is now a higher percentage of students in nonminority schools in the South than in the North. This represents some progress, at least in the South. But it is hardly grounds for rejoicing that only 38 percent of black children in the Deep South and 28 percent of the black children in the North and West are in majority nonminority schools. It is time for all of use who have concentrated on desegregation efforts in the South to realize that school desegregation is a national problem. We must move away from just "dismantling dual school structures" and move toward the establishment of integrated schools with innovative educational programs.

We must approach the problem of racial isolation comprehensively. We think H.R. 4847 contains a comprehensive approach. It says segregated education is bad wherever it is and whatever its cause and sets as a goal quality integrated schools. The administration bill does not set a standard of integration. Indeed it perpetuates an unnecessary distinction by categorizing the types of districts for which assistance will be available. For example, school systems which are desegregating under court orders or title VI of the Civil Rights Act of 1964, regardless of whether there is real integration occurring in the schools of such districts, are eligible for assistance. Then it makes eligible districts which are reducing racial isolation in their schools without specifying what "reducing" means in terms of integration.

We think H.R. 4847 is more positive and therefore will be more effective in several important ways.

First, definition of "integration."

H.R. 4847 defines an integrated school as one containing both educationally advantaged and educationally disadvantaged as well as minority and nonminority students. It takes into account the educational advantage of economic diversity as a key element in successful integration. Last year, President Nixon himself reiterated this principal conclusion of the Coleman report.

The administration bill, on the other hand, does not speak in terms of integration or integrated schools at all. In fact, the two paragraphs defining those eligible districts to which I assume most of the money will be directed—districts with court order of title VI approved plans—mention only the desegregation of schools. Since "desegregation" is not defined for the purposes of this act, H.R. 2266 leaves it up to the courts and title VI to define desegreagtion.

I won't list all the cases where desegregation has been defined to mean the continued existence of all-black schools. I refer to some of them in my testimony.

Also, in court and title VI approved desegregation plans, there is frequently little consideration of the educational background of the students who are reassigned. This often means that when schools are integrated, poor blacks and poor whites are assigned to the same facilities. In such circumstances, the educational advantages of desegregation are less likely to materialize. The racial and economic integration as provided in H.R. 4847 would not only produce integration but improve educational quality as well.

In addition, under H.R. 2266 school districts can receive funds "to prevent racial isolation reasonably likely to occur" in a school with as few as 10 percent minority students. I assume this provision is meant to prevent "tipping," but it would seem there is little danger of that with as few as 10 percent minority enrollment in schools.

In his Senate testimony, Commissioner Marland criticized the provisions of the alternative to the administration bill, the Mondale bill, for not providing a districtwide approach. However, it is only in the court and title VI approved desegregation plan districts, which are found almost entirely in the South, that systemwide consideration is required under the administration's bill. Even then, the only systemwide feature of the administration bill is the fact that it declares eligible all "desegregating" districts. The administration bill would not in and of itself produce desegregation; it would simply provide funds to "desegregating" districts, not based upon performance in terms of integration, but because they happened to be under court orders of title VI of the Civil Rights Act of 1964. In other districts, its approach is not necessarily systemwide.

There is a third category of district eligibility for which funds those districts voluntarily agree to completely eliminate minority group isolation in all their isolated schools. I think in light of our history that is going to be a rare occurrence. We welcome that happening. But we assume the greatest amount of money will go to districts that do not voluntarily agree to desegregate.

In summary the administration bill and the Hawkins-Reid bill in the House both would permit funding of school districts containing both integrated and segregated schools. But H.R. 4847 would provide funds only for use in meaningfully (as defined) integrated schools.

Second, discourages tokenism.

Under H.R. 4847, local educational agencies must establish or maintain stable, quality, integrated schools in order to receive assistance under the act. But under H.R. 2266, a district may be funded if it reduces to an undefined level minority group isolation in one or more minority group isolated schools or if it reduces, again to an undefined level, the total number of minority group children in its isolated schools. This invites tokenism. It would permit funding of a district which moves a handful of minority group students into schools which remain overwhelmingly nonminority.

Third, requires both student and faculty integration.

H.R. 2266 authorizes funding of districts for desegregating faculties without necessarily integrating or even desegregating student bodies. We assume the authors of H.R. 2266 did not intend this. Moreover, the language of section 8(10) would appear to preclude the voluntary integration of faculties under the act, even though President Nixon himself enunciated a policy of complete faculty integration in his March 24, 1970, statement on school desegregation. Worse, the standards for faculty desegregation announced in the *Singleton* case and endorsed by the President and administration are undercut in H.R. 2266.

Fourth, assures adequate concentration of funds.

The administration bill has no provision to prevent the spreading of funds thinly and thus ineffectively. H.R. 4847 requires that programs funded must "involve and additional expenditure per pupil to be served * * * of sufficient magnitude to provide reasonable assurance that the desired educational impact will be achieved."

Fifth, provides for independent programs sponsored by private, nonprofit groups.

Under H.R. 4847, 6 percent of the funds appropriated is earmarked for projects submitted by private, nonprofit groups to promote equality of educational opportunity. No money is earmarked for that purpose under H.R. 2266. And under the administration's bill it appears that private groups can only be funded where the local district has also applied for funding. That would exclude groups with good proposals in districts where officials have turned their backs on promoting integration and where private action is needed more than ever.

Sixth, authorizes a standard for interdistrict cooperation.

It is quite clear that in order to completely intergrate the majority of the large urban school districts in this country, interdistrict cooperation will be necessary. H.R. 4847 recognizes this fact and sets aside 10 percent of the authorized funds as an incentive for combined urban-suburban efforts in establishing integrated schools. While the bill does set forth a standard of integration to be achieved in such efforts, it is much too low and we urge a maximum variation of 20 percent. H.R. 2266 authorizes interdistrict cooperation, but it sets no standard for the integration to be accomplished, nor does it earmark funds for this purpose.

Seventh, provides for educational parks.

One of the most innovative and promising means of reducing minority group isolation in metropolitan areas may be the development of educational parks. While several big city systems have explored this possibility, sufficient funds toward their construction have been unavailable. H.R. 4847 would set aside 10 percent of the funds for the development of model integrated educational parks. It would thus provide a start toward getting these educational innovations established. From this could come useful lessons to be applied in future efforts to integrate urban school systems in all parts of the country. The administration bill has no comparable proposal.

Eighth, provides for integrated children's television programs.

The problems of racial and ethnic divisiveness in this country will never be overcome until minority and nonminority groups learn more about each other. H.R. 4847 would attempt to do something about this understanding gap. It would set aside 5 percent of the funds authorized for the "development and production of integrated children's television programs of cognitive and effective educational value."

Ninth, limits the percentage of discretionary funds.

H.R. 2266 would give the Secretary 20 percent in discretionary funds while H.R. 4847 would limit discretionary funds for the Commissioner to 10 percent. Commissioner Marland in testimony before the Senate Subcommittee on Education stated that "the Secretary may use these funds—the 20-percent discretionary funds—to support model and demonstration programs of national significance"—model programs similar to those funded under H.R. 4847, he later said. If it is the administration's intention to fund such model programs, why did they not spell it out in their proposed legislation with appropriate requirements for effectiveness as in H.R. 4847?

I want to go to the latter part of my statement and talk about authorized activities. We favor limiting the provisions and making sure the money is spent to accomplish desegregation.

If I might just respond to what the chairman said about the fact that this money should have been going to school districts all along.

I would hope we will see this as a desegregation bill and not as a general school finance bill. This is a bill supposed to help in desegregation. Because of this we think the activities set out and authorized for funding under this bill should be specific and very limited. On pages 17 and 18 I have outlined some of the language that should be rewritten.

I am not going to go into safeguards and procedures. I have written a long section on it, and I hope the committee will take time to read this. I hope this committee in reporting out a bill will pay as much attention as possible to writing into the bill you come out with the best possible safeguards.

Finally, after the safeguard section in my testimony, I would like to suggest a few strengthening amendments to the existing provisions of the Reid-Hawkins bill, which we hope will be added by the subcommittee.

First, the highest priority under the bill should be assigned to funding school districts which integrate all schools within the system to meet the standard spelled out in the definition of integrated schools in H.R. 4847.

Second, if the program should be renewed beyond the 2 years for which funding is requested in this bill, I would add a requirement that a school district must increase at least by one each year the number of integrated school projects funded under this act, and that they be automatically assured of an increase of funds for the new students involved at least equal to the per pupil expenditure of schools already participating in this program. Such a requirement builds a progressive and continuing financial incentive to integrate schools.

Third, I would omit the 1,000 student population minimum size requirement for a school district's eligibility but retain the requirement that the district be made up of at least 20-percent minority group children until the 3,000 student population level is reached.

I am referring to section 5(a)1(b).

With the 1,000 student population requirement, small, isolated, rural districts in Texas, Oklahoma, and Arkansas, and elsewhere would be excluded from funding. These districts probably should be consolidated with neighboring districts, but it would be unfair to penalize them without penalizing their neighboring and large districts which may well be refusing to take them in.

Fourth, our review of districts which participated in the emergency school assistance program has convinced us of the need for more careful monitoring of recipients for violations of civil rights requirements and program regulations. This will be true of any school desegregation or integration assistance bill passed by Congress.

If this subcommittee should decide to mark up a bill containing assistance for desegregating school districts without a standard of integration such as that in H.R. 4847, we recommend that you include an amendment along the lines of a proposal offered last year by Congressman Reid to the school desegregation assistance bill then under consideration on the House floor. His amendment would have established a procedure under which an aggrieved party—a parent or teacher, for example—could file a complaint with respect to and alleged violation of the school desegregation assistance measure or title VI of the Civil Rights Act of 1964. Within a specified period of time—say, 15 days—the Secretary would investigate the complaint. If he found probable cause, he would immediately suspend further assistance to the recipient district and hold a formal hearing. If the hearing determined that the complaint was justified, assistance would be terminated. If not, assistance would be resumed. Such a provision would not meet our concerns about the lack of integration standard in districts which may be desegregating under ineffective court orders or title VI plans. But, under a complaint procedure such as that suggested by Congressman Reid, there would be some check against discrimination or violations of program regulations—problems which we found were widespread in the emergency school assistance program.

Fifth, in addition, we believe that the subcommittee should include a provision requiring pregrant reviews by HEW to assure that desegregating recipent districts particularly are complying with the terms of their court-ordered or title VI school desegregation plans before they begin receiving assistance under the legislation you are now considering.

Mr. Chairman, we wish to submit for the hearing record, along with our prepared statements, the memorandum to which I referred earlier elaborating upon our testimony with respect to reimbursement of attorney fees.

We appreciate your interest in our testimony and would welcome any questions you may direct to us.

Mr. PUCINSKI. Thank you, Mrs. Edelman.

Mr. Mitchell, would you like to proceed?

Mr. MITCHELL. I would like to offer my complete testimony for insertion in the record and to summarize it.

Mr. PUCINSKI. Without objection it will be so ordered.

(The statement referred to follows:)

## STATEMENT OF CLARENCE MITCHELL, DIRECTOR, WASHINGTON BUREAU OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Mr. Chairman and members of the subcommittee, I am Clarence Mitchell, director of the Washington Bureau of the National Association for the Advancement of Colored People. I thank you for this opportunity to appear and present testimony on legislation to provide financial assistance in achieving school desegregation and maintaining a high quality of education in the public schools.

At the outset I would like to commend Representatives Pucinski, Hawkins, Bell and others for their bipartisan efforts to get action on the emergency education bill in the 91st Congress. It is regrettable that the addition of crippling amendments by the prosegregation bloc on the House floor made it necessary for us to oppose the bill in the Senate.

We also deeply appreciate the work done by Senator Walter Mondale (D.-Minn.), chairman, and Senator Jacob Javits, ranking Republican member of the Senate Select Committee on Equal Educational Opportunities. We sincerely hope that, after the painstaking labors and the assembling of valuable information by this committee, there will be much reliance upon it and its members in the shaping of the legislation now under consideration.

Our organization is also aware of the long personal commitment that the present Secretary of Health, Education and Welfare, the Honorable Elliot L. Richardson, has shown in his support and advocacy of equal treatment for all citizens without regard to race. The country is indeed fortunate that at this point in time there are so many men of good will in high places who have accepted the responsibility of formulating and passing a much needed law.

Last year we presented testimony to the Senate. The following portions of that testimony are still pertinent:

"In order to accomplish the objective of complete desegregation of the public schools in our country we recommend the following:

1. The funds made available must be used to assist in those school districts which are desegregated (a) voluntarily (b) because of federal or state court

orders (c) because of legislative directives of a state, county, municipal or other law making body.

2. School districts which are desegregating in compliance with programs approved by the Department of HEW must be assisted.

3. Schools which are in so-called tipping categories where funds are needed to increase attendance of minority group students or to prevent such schools from becoming wholly resegregated must receive aid.

4. Schools racially isolated because of residential patterns must also become eligible for aid. However, in such schools, assistance should be given only when there is definite assurance that the school authorities are making a continuing effort to end the racial isolation of such schools and to achieve total desegregation.

5. Congress must face up to the need for repealing the contemptible additions to the law which have created confusion in the desegregation programs of this country. The so-called anti-busing provision contained in Title VI of the 1964 Civil Rights Act, the Fountain amendments and the Whitten amendments have all created mountains of mischief that bar the way to reaching the promised land of school desegregation in the United States.

6. We must also provide for the payment of attorneys' fees in cases where plaintiffs are seeking to vindicate their rights in educational matters under the provisions of the Constitution and the laws of the United States.

Items 1, 2 and 4 are clear and do not require any explanation in this statement. Items 3 and 5 do require additional comments.

With respect to item 3, we have had extensive discussions with members of the House and education experts on how to accomplish orderly desegregation of schools which are affected by so-called de facto segregation. The suggestion has been made by Representative Roman Pucinski (D.-Ill.) and Representative Albert Quie (R.-Minn.) that the Secretary of HEW could give assistance to public schools where more than 15 per cent of the student population is made up of a minority group or groups but not more than 50 per cent. In discussions on this suggestion, some educational experts have indicated that the 50 per cent ceiling is too low. Others have suggested that the percentages should be omitted altogether and the decision to aid schools in this category should be left to the discretion of HEW. The Education Department of the NAACP has suggested that it is better to rely upon the discretion of the executive branch of government in this kind of situation, but if percentages should be written into the law the floor should be 15 per cent and the ceiling should be 70 per cent.

With respect to item No. 5, I wish to point out that Congress has been a bulwark of protection for civil rights since the passage of the 1964 Civil Rights law. From 1932 to 1957 the minority groups of this country had to look to the executive branch and the Supreme Court for help in protecting their constitutional rights. With the enactment of the 1957 Civil Rights law and continuing through the Kennedy and Johnson Administrations, all three branches of government were instrumental in protecting the constitutional rights of minorities. We are now in a period when Congress has become the major battle ground in which the hard won gains in the fight for civil rights are to be protected. On the whole, the Congress has an excellent record in attempts to hold the line against those who would destroy programs of protecting the right to vote and dilute the effectiveness of federal courts with appointment of judges who are hostile to civil rights and who are advocates of racial segregation.

However, it should be noted that the segregation advocates of this country and allies in Congress who come from Northern States have used the appropriations bills to water down the effect of the 1954 school desegregation decision and the clear objectives of the 1964 Civil Rights Act. The plain fact of life is that the appropriation committees are dominated by members who are not sympathetic to minority groups. In the secrecy of the committee room these members of the Senate and House concoct the kind of language that may seem reasonable on its face, but which in fact, is designed to nullify the 1954 school desegregation decision. For example, by using some deceptive semantic lachemy they have made the ordinary word "busing" take on the connotation of a precious luxury which must not be paid for with tax funds. But when we remove the verbiage and get at the facts we discover that what is really meant is a restriction on the use of federal funds for school desegregation. When these amendments come to the floor of the House and Senate, they place the rights of minority groups in competition with the millions or billions that are being appropriated to perform the necessary functions of the Government of the United States. In this kind of contest, it has been my experience that very few members of Congress want to take the side of the minority groups.

Usually, the solution is found in substituting language which is said to be innocuous and may in fact be meaningless. But these revisions, whether meaningful or superfluous, have the effect of placing the Government of the United States in the shameful position of appearing to sanction second class citizenship for the black children of this Nation."

We have discussed the merits of this legislation with many of our colleagues in the civil rights field. Because of our great respect for some of these persons who are recognized experts, I would like to call the Committee's attention to the following items.

1. The suggestion has been made that any legislation approved should carry adequate provisions to insure that qualified private groups may be called upon to provide assistance in accomplishing integration of the public schools. As I understand it, this is being done to some extent under the program appropriating $75 million for emergency school assistance which was approved by Congress in 1970. It is the opinion of experts in the field that the Mondale bill, S. 683, has the best kind of provision to insure the implementation of this type of program. Therefore, we hope that any bill that is approved will contain the appropriate language from S. 683.

2. It must be clear that there can be no discrimination in the selection of teaching, administrative and other staff personnel, whether professional or non-professional, in the schools that receive assistance. There is some feeling that while this provision is clearly set forth in the Mondale bill, it is not as clear in the Administration bill.

3. It is especially important to insure that promising innovations can be financed under this legislation. The Mondale-Javits Committee has explored the possibility of developing model integrated educational parks. This particular idea may well be an ideal solution to some of the problems that are created by long standing patterns or neighborhood segregation in our cities. It deserves a chance and Congress can provide that chance by clearly authorizing the expenditure of funds for this purpose. Unless such authorization is written into the legislation, it is unlikely that the Executive Branch of Government will undertake this kind of experimentation. Again, we emphasize that the devoted work done by the Mondale-Javits Committee must not be allowed to gather dust in some file drawer. Congress has the opportunity to give life to the valuable findings of this Committee and it should do so especially in this area of educational parks.

4. There is a need for providing parents, interested organizations, and indeed the public in general with access to the plans for use of funds provided by this legislation. There should also be opportunities to determine the effectiveness of these plans after they are implemented. We urge that such guaranties of access be written into the bill reported by your Subcommittee. Of course, such access should be accompanied by appropriate safeguards to protect matters relating to individual children.

Although there is always a temptation to use a magnifying glass to look for errors in almost any proposal before Congress, we believe that the emphasis should be placed on the constructive side of this legislation.

We do emphasize that we will oppose it if it is used as a vehicle for segregation amendments, as happened in 1970 in the House. The time has come to call a halt to the tactics of those who are still trying to make back door assaults on the 1954 school desegregation decision.

We sincerely urge that the highest motives will prevail and that Congress will pass a bill that is free from the taint of racism.

Thank you for this opportunity to testify.

Mr. Mitchell. I would like to say I think we have an abundance of good fortune in the approach to problems of education in that for the first time in the years I have been around Washington there is really indepth concern about where we are headed in this area of desegregation all across the board, certainly in the subcommittee, in the full committee and in the Senate and in the administrative branch as I have mentioned with respect to Secretary Elliot Richardson.

I have frequently taken in vain the name of Congressman Quie on the Senate side by pointing out how we had discussions last year with the chairman on how we could come out with a good bill. I think the country ought to know the kind of work that Congressman Bell and Congressman Hawkins did in the Congress last year right down to the wire, right up in the Rules Committee trying to get action.

I would point out, Mr. Chairman that the recommendation which appears on page 2 of our testimony are in a sense an attempt to put into words the kind of things that you and I discussed informally about what would be in a bill that we could live with.

I think that it was a very helpful thing that you gave the kind of attention to this that you did because as you will remember when the administration bill first came over last year it would not have been possible to reach schools in your city of Chicago and it certainly would not have been able to reach the kind of thing in Los Angeles where Mr. Bell and Mr. Hawkins were concerned about State court orders under which the city of Los Angeles was laboring, but the administration bill of course would have dealt only with Federal court orders.

The first two items on page 2 really deal with the types of school districts that ought to be covered and I think they speak for themselves.

The third item it seems to me deserves some explanation in that our wording here grew out of a conversation I had with the chairman in which subsequently I cleared with our educational experts, because as I understand it there are schools which fitted the so-called tipping categories where they might become resegregated after having been desegregated.

I know the chairman has been very concerned about that as all of us are and it would be hoped that in the administration of any program, the Congress approves we would try to meet that eventually.

Then we did discuss at some length the question of what happens in these schools that are isolated because of community patterns.

All of us know that in every American city you get to a place where as the minority group population moves in you lock in a school segregation system simply because the only people in the regular school area are members of minority groups.

On page 3 we deal under section 5, with the question of the destructive amendments that are put into legislation last year. I am sure Mr. Bell will recall, because he was present, that in the Rules Committee last year, that one of the Members of the House who comes from a district which had offered considerable resistance to school desegregation came in and discussed his ideas on what ought to be in the bill.

There was an attempt made to try to get him to come out with a kind of fire-eating attack on busing. He did not go for it. He said, "Our schools are under a court order to desegregate and if we are going to desegregate we need money for busing. Therefore, I do not want to make this an issue."

I was surprised to find that when the busing amendment was offered on the floor he voted for it, but of course that is practical political reality. I think we cannot continue to have that kind of hypocrisy in our education program. I think we have to face up to the fact that busing is a requirement that we must have.

It does not have anything to do with race. We have been busing children for years. Even the schools that have been set up under private auspices to escape court order desegregation in the public schools, have to bus children to school.

So it seems to me, Congress ought to reject this kind of fiction and insist that we are not going to taint the education bill with so-called antibusing amendments.

There is another provision which is on page 15, line 14 of H.R. 2266 in which the word discriminatory has been inserted. That word does not appear in the Senate version of the administration bill.

My associates here, for whom I have great respect, believe, and I agree with them, that this is a mischievous word which even if it ultimately was proved to have no legal significance, would bring about a great deal of litigation in trying to decide what it means.

As some of you may remember, this was inserted on the floor and I do know that the author of that proposal in his testimony before the Rules Committee had expressed a great desire to have some kind of arrangement which would permit the schools to put children in categories under which they could be trained on the basis of their ability.

I do not know whether that is right or wrong from an educational standpoint but I do know under our experience we have always found that when children are put into categories as slow learners and things of that sort, it has a lot of traumatic effect on the children and in addition it is an open door for those who want to continue intraschool segregation to work their will.

So I would hope we would eliminate that word and do as was done in the Senate version, simply call for avoidance of isolation of the schools.

Page 3 also has an item 6 on it which deals with attorneys' fees.

That was included in our testimony because our national convention, after considering the proposed administration bill last year, felt very strongly that we ought to make some provision for the payment of attorneys' fees in these cases where you have an equal contest of the State officials using the State funds to prevent desegregation of the schools and the parents organization such as ours thrown on their own resources to try to get a remedy.

I don't know that anyone has compiled a very clear analysis of exactly what it costs to handle an individual case in a school district but it just happens that I have been involved in a lot of them in my native State of Maryland and I know that it costs at least the $500 to go through an administrative proceeding and it may cost anywhere from a thousand to two thousand dollars in the U.S. District Court.

The costs then escalate as you go up, for printing of records and things of that sort.

I am sorry to say some of these school districts are inordinately recalcitrant. The other day, for example, there was a hearing over in Cecil County, Md. in which the dispute was about whether one little boy in grade school should be put out of school.

That hearing started in the early hours of an evening, ran on through until 2 o'clock in the morning with all kinds of psychiatrists and other kinds of experts involved which seems to me unfair to parents, the child and their lawyer because if school boards really approach this thing in a spirit of cooperation most of the disputes about children and their behavior are things that could be settled in the office of the principal, assuming all parties act in good faith.

Skipping over to page 5 of my testimony, I would like to point out that we have tried as an organization to see whether there are ways that some of the features of the Mondale bill could be incorporated in the administration's proposal.

We are familiar with the English language and reasonably familiar with legal construction so it is difficult for us to see how it would be so hard to put together the best features of these bills. I feel reasonably certain, as a practical matter, that that is the only way we are going to get any kind of legislation and that is make peace with all the parties involved.

I would say also that just for the record, it seems important to remind the Congress that Mondale-Javits Select Committee which is working on education problems was and is a good faith effort to try to figure out how we can solve the education problems of this country.

This committee was set up when Senator Stennis of Mississippi, working in conjunction with Senator Ribicoff of Connecticut, were trying to show that the North was made up of a bunch of hypocrites; that they were trying to enforce integration of schools in the South but not in the North.

Some of us had a lot of concern about that. I am certain that the Members of the Senate from the North were very concerned. Out of that concern a suggestion arose which was that the Congress set up a committee which would make an investigation of education conditions in this country.

The committee has done a very thorough job. It is a bipartisan job. I think that it would be unfortunate if all of the good work that they have done, all the sincerity that they have brought into the picture goes down the drain because we do not take into consideration their recommendations.

Therefore I have included in my testimony some items which begin on page 5. No. 1 really deals with the question of to what extent will we draw on private groups for assistance in achieving school desegregation.

As I understand it this is already done under the $75 million appropriation and it seems only logical that it could be done under this program.

Number two deals with the question of selection of personnel.

In that connection the House bill—I am sorry I just have the Senate bill before me—but in H.R. 2266 on page 14, some of my colleagues who are here expressed concern about subsection 10 dealing with staff members and applicants who work directly with children, et cetera. They are concerned because they think that wording lends itself to possible discrimination in the selection of personnel. I would hope we would diligently try to make sure that we have language which is foolproof dealing with the selection of teachers.

As I understand it, those who have carefully studied this field say that this language would prevent a school system from bringing in members of minority groups on the staff in order to desegregate faculties, administrative staffs, and things of that sort. If in the committee's judgment that is a valid criticism, I earnestly hope that we will revise that language.

The third item on page 6 of my testimony deals with the question of education parks. I think this is something that deserves very serious consideration. I cannot believe on the basis of my experience with local governments, city councils, and boards of aldermen, that we will ever get money expended for education parks unless there is a clear legislative mandate requiring that such education parks be set up.

I would hope that some members of the committee would drop over to Baltimore. I stress that because I live over there and I know on that school board there are very sincere people of both racial groups. They are embarking on a program of building a lot of new schools, but as I see that program it is going to result in more racial segregation, more racial isolation of children.

As I said, because I know the members are acting in good faith, I don't think they want to have a segregated system. I feel that perhaps the education park represents the best chance of drawing children from various parts of communities.

However, because it is experimental and because it does require expenditure of a lot of money, I do not think that an administrative officer would have the courage to spend that much money unless there was a legislative mandate on which he could rely. I sincerely hope that the committee will consider that as a part of this bill.

The Mondale bill which Mr. Hawkins has also introduced has in it a specification with respect to educational television. I would hope that school systems were sensible enough these days to make use of educational television; but to the extent that they are not, I would hope that the committee would consider what it had to do to be sure that we will take advantage of educational television.

The final point which I make has to do with No. 4 on page 7. That has to do with the question of providing access to plans for the use of the funds. This is a common failing of all Federal activities where money is being spent.

If you live in a local community, it is almost impossible to keep track of what is happening even though the public is entitled to information.

So I would hope as is provided in the Mondale bill, that there would be consideration to providing as a matter of law: that people will have access to the plans that are being made at a stage early enough for them to make appropriate suggestions and revisions, proposals for revision; and at the same time I would hope that in the reviewing process there would be a clear way in which we could make certain that these matters are not left to the caprice of indifferent officials.

At the same time I would hope that we would have adequate safeguards of the privacy of the children. I don't think it would be good to have some kind of arrangement under which somebody could go in and find that Mary Jones is a slow learner and put that on page 1 of the paper for the purpose of embarrassing the family or the child.

Having said those things, Mr. Chairman and members of the committee, I conclude my testimony; and I thank you very much for this opportunity to appear.

Mr. PUCINSKI. Thank you very much, Mr. Mitchell.

As usual, your testimony is succinct and concise and to the point but extremely helpful. We here on the Hill have learned over the years to respect you as one of the most knowledgable men in this whole field of civil rights, and we are very grateful that you are here with us this morning.

We are going to follow on the 5-minute rule, at least on the first go-round as scrupulously as we can, so that everybody gets a chance.

I believe though that we will have to come back this afternoon if we do not conclude the testimony and I hope that it will be agreeable to the witnesses to come back if we have to.

Mrs. Edelman, in your statement you said that the total integration of all schools in a system is the principal goal of the Mondale bill.

As I read the bill, I must come to the conclusion that under his bill the school board or school districts that would receive Federal aid would indeed have to integrate every school, and what this really means is a massive busing program of children from outer-city areas into the inner city, and inner city into the outer city, in order to achieve the kind of racial balance that Senator Mondale foresees in his bill. Now am I reading that correctly?

Mrs. Edelman. I think I did not make that statement in the testimony itself. What I said was that I would hope that a priority might be established to provide for that. I did not say that the Mondale bill in fact provides for that.

Mr. Pucinski. Then you said in your testimony that the administration bill does not set up any standards for desegregation, and the Mondale bill does.

Would you be good enough to call the committee's attention to where the Mondale bill sets up these criteria for integration?

Mrs. Edelman. If you look in the definition section of the Mondale bill, it defines integrated schools on page 27.

Mr. Pucinski. Let us read that. The term "integrated school" means a school with a student body, containing a substantial proportion of children from educationally advantaged backgrounds which is substantially representative of the minority group and nonminority groups students population of the local educational agency in which it is located."

Now what in your judgment is the definition of "substantial"?

Mrs. Edelman. If I had my druthers, I would take out "substantial" and put in a figure which would provide not less than 25-percent variation. But I suppose it means the same thing the court used in the *Singleton* case, which says a school district faculty must reflect substantially the population ratio, and the teachers that are appointed to facualties must reflect the ratio of students in the student body. There should be some variation, but not a lot.

Also, I would hope HEW in drafting its guidelines would set out criteria which will minimize the variations they might want to read into "substantial." We think it is different from the word "significant."

Specifically, I would have it taken out if I had my druthers.

Mr. Pucinski. I would never presume to try to interpret or speak for the other body but in last year's bill Senator Mondale did have a specific formula, a formula that required that the number of minority children has to be in direct proportion and ratio to the total number of nonminority children in a school district.

When we pointed out to the good Senator that he was proposing a quota system for the country, he recoiled and said that is not true. But it is rather significant that in the new version of the bill that formula has been dropped and the word "substantial" which I agree with you means really nothing was put in.

And I will renew my request to you when I come back under my next 5 minutes to be thinking about it, on where in this bill is there the kind of specific definition that you had referred to in your remarks on integration.

Now my 5 minutes have expired and we will come back to that question later.

Mr. Ford?

Mr. Ford. Thank you, Mr. Chairman.

There is concern, which I think is illustrated by the testimony of this panel among some members of the committee that the philosophy of implementation involved in writing this legislation is sufficiently divergent between the House and Senate sides so that a good deal more explanation is going to have to take place if we hope to have two bills emerge from the respective Houses and be close enough to each other in resemblance so they might be resolved in a conference.

I would hope that some of those adhering to the more rigid positions assumed on this side might be relaxed and they might do the same to accommodate us on the other side.

From what has been said here in discussing the program of last year, it would seem to me that you are suggesting—all three of you but particularly Mrs. Edelman and Mrs. Martin—that this committee might very profitably conduct some onsight inspections and localized hearings in various parts of the country where we might have access to people with actual experience with the program of last year or perhaps do that and in addition thereto conduct hearings here where we afford an opportunity for those people who can come to describe to us exactly how these sophisticated methods of desegregation were developed and implemented.

Do you think that we could productively gather that kind of information if we held field hearings?

Mrs. MARTIN. I think that is an excellent idea and I am certain you could get people to come here—school officials, community people, and the Washington research project will offer our assistance to the committee in trying to get together that kind of hearing.

Mrs. EDELMAN. I endorse that.

Mr. FORD. Do you think we would be able to have the kind of cooperation from school people that would give us an opportunity to see how they rationalize the situations that the report indicates to us are a form of desegregation?

Mrs. MARTIN. School is going to be over in the South in the middle of May. If the committee can, before that time, go out as a committee I think you will find that many school systems don't really know themselves what they are doing with the money. They were in such a rush to get the money out that it forced many school systems to do more of the same thing.

Many school officials consider this an extension of title I. What they did was hire additional teacher aides. But many of them could not honestly identify what the emergency situation was and how they should deal with it with this money.

I think many of them could not honestly identify the emergency, and would say that to you honestly.

Mr. FORD. That brings up a second part of the same question. I become concerned about the instances coming to my attention of the difference between the way title I is being implemented and how it has been administratively changed in its thrust over the past few years from what I understood it to be when we wrote the act in 1965 and did the most massive hearings on it again in 1966.

Do you think that a thorough investigation of the present operation and administration of title I could provide us with valuable information in terms of tailoring this legislation?

Mrs. MARTIN. I think that, too, is an excellent idea.

In 1969, the Washington research project and NAACP Legal Defense Fund issued a report evaluating title I. We set forth how those funds had been misused over a period of time. One of our recommendations was that there be an oversight hearing into how title I was being administered. That oversight hearing has never been conducted and our recommendation still remains the same because we feel that despite many of the paper changes that the Office of Education has made regarding the administration of the program, many of the same abuses continue to occur.

We think that, too, would be a valuable hearing.

Mr. Mitchell. I think in the best of all worlds if we had had diligent enforcement of title VI and adequate expenditures under title I, we probably would not need this legislation. That unfortunately is not the case and we are confronted with a deepening crisis on schools. Therefore, I would hope that investigations, which certainly are important and necessary, would not impede the progress of the bill. I don't know whether your full committee has a bona fide legislative oversight subcommittee with respect to education matters, but I would assume, if there is such a subcommittee, that it would be the proper body to make it on-the-spot investigations in depth.

And I would hope that this subcommittee would more or less sample the worst things, sample some constructive things so that we would not have a time lag in getting the bill to the floor.

Mr. Pucinski. Mr. Bell.

Mr. Bell. Thank you, Mr. Chairman.

It is a great pleasure to welcome to the committee my old friend Clarence Mitchell. We are all aware here on the Hill of the outstanding work he has done in realistically trying to do something about these problems.

My question goes to Mrs. Martin, I believe.

Mrs. Martin, how many people were involved in the monitoring effort between September 18 and September 22, 1970 which you spoke about?

Mrs. Martin. According to our staff 150 people.

Mr. Bell. How many people would this involve in a district and how much time would they spend in a district?

Mrs. Martin. Most of the districts we monitored were small because those were the districts that were operating under terminal desegregation plans to be completed in 1970. In some communities, the time spent there depended very much on how many schools there were—the size of the school district. I myself went to East Texas. For example, the largest school district that I visited had 10 schools. I did the monitoring myself and I was out a week. I looked at six school systems. We frequently worked from 7 in the morning until 12 at night.

Mr. Bell. You are talking about only 9 days of working trying to determine some facts that you are stating. This is a short period of time——

Mrs. Martin. Yes, sir.

Mr. Bell. To try to determine actual substantial facts that you could lean on heavily.

In other words, I note in some of the statements you made in the past there was something that was left to hearsay I thought.

Mrs. Martin. I offered to present the committee with a copy of the HEW "rebuttal" to our report which substantiates our findings.

Mr. Bell. Some of it does.

Mrs. Martin, I think we have to recognize, as Mr. Mitchell just said, that we have been trying to integrate many of the schools in our Nation, particularly in the southern areas, for many many years and we have not had really to the perfection standpoint. We have had relatively small success. We have had some success but not as much as we would like, you and I and others.

Mrs. MARTIN. I agree with that.

Mr. BELL. The point is that I think the example you are giving and recognizing the extent that HEW backed it up—I think you are seeing today what our trouble is in the South. You just try to push a wet noodle and it does not push very easy. That is really what we are doing and you get this kind of report any time you try to integrate the areas down there.

Mrs. MARTIN. Mr. Congressman, I think there is no excuse from isusing Federal money, especially when it is spelled out in detail how it is to be used. That was the basis of our report. School districts did not use their money in accordance with the regulations.

Mr. BELL. I agree. Is this the first time?

Mrs. MARTIN. No, the title I report showed the same thing.

Mr. BELL. So in other words we have had misuse of Federal funds down there for some time. I think it is unfortunate and we should prevent that. I think the administration is trying to but this is an example of problems that we run in on.

Were all of these evaluations done first hand by your own staff or was much of it fact based on reports by others which were not substantiated?

Mrs. MARTIN. There were six organizations involved in conducting the report. The largest number of staff people came from the Lawyers' Committee for Civil Rights under Law. I think they contributed 50 or 75 people. We stand behind our report. Every State had a State coordinator—someone with long experience in the field of civil rights. We are not suggesting we did not make any errors because it is possible that we did. We think that our people were qualified and we stand behind their findings.

Mr. BELL. Are you saying, Mrs. Martin, that there was no error made, it was perfect. It would be the most perfect—are you saying they made no mistakes?

Mrs. MARTIN. I just said I am not saying that the report does not contain any errors. I certainly cannot say that. It certainly could. But the people that went out had experience; they were operating under specific kind of direction. We used a uniform data gathering device. Some of them may have made mistakes; some of them may have made miscalculations. But we stand basically behind our report.

Mr. BELL. Would you put in the record the area of your mistakes?

Mrs. MARTIN. I don't think that is a fair question. If you could go to the report and challenge me on a specific item, I would be happy to try to respond to it.

Mr. PUCINSKI. Mr. Meeds, the gentleman's time expired.

Mr. MEEDS. Thank you, Mr. Chairman.

It is indeed a pleasure to welcome before the committee such capable and articulate spokesmen as we have heard this morning. And my questions generally are perhaps very general philosophical questions because I don't understand the bill that well at this time. I have not had an opportunity to get into it at depth. But it seems to me—I have been glancing at the report which your group made so I will direct my first question to Mrs. Martin.

It seems to me that after Brown versus the Board in 1954 we had some effort to integrate school districts which we are still trying to do and which we have not accomplished completely. But since the enforcement of that has become more specific, we have broken away now and we now have segregated schools and segregated classrooms and practices within integrated school districts.

We just really have not made the headway that ought to be made in terms of really getting integrated activities for students. It has just been pushed into another corner.

Part of the fault for that I think is that we have not enforced Civil Rights Act, title VI, as we should have and some other things.

If we come out with legislation which in effect does not strictly require absolute integration in terms of classrooms, in terms of schools, locker facilities, buses, and all these other things, are we just postponing the day of reckoning further and further and in effect creating in the minds of those who would like to perpetuate this kind of system the fact that by assuming another degree of this problem or taking another degree or pushing it into another corner that they can postpone and put off that day of reckoning. That is a very general question.

Mrs. MARTIN. I think that is right. I would hope that the Congress of the United States would not appropriate money to aid in the process of desegregation on the one hand and yet continue to permit the kinds of things that you pointed out. Segregation within classrooms and segregation on buses would be a terrible kind of irony for young people to have to grow up with.

Mr. MEEDS. Realize I am speaking of absolute and outright segregation. I am not just speaking of discrimination. I am speaking of absolute segregation as your report points out. Jim Crow on schoolbuses, segregated classrooms within schools and signs over the doors "Negroe students" and things like that. Absolute segregation.

Not to mention the little degrees of discrimination which run through this all. So it would seem to me that we simply must enact the kind of legislation that is not going to be utilized to further that process and indeed must be used as a carrot to do away with it.

Mrs. MARTIN. I think that is right.

Mr. MEEDS. In the field of enforcement—and I will direct this to both you and Mrs. Edelman, I would like both your answers—I think we all have a dilemma here.

How much enforcement can we bring about through the passage of legislation which makes money available? Clearly the only enforcement is that if they are going to use that money they have to follow the guidelines that we set up. Isn't that about the extent of it, on that portion of it?

Mrs. EDELMAN. I think that is right, but I would suggest that it would help a great deal if this committee or the Congress were to say, "We outlaw racial segregation regardless of where it is." Then there is a national policy to that effect which at least gives a mandate to HEW to have a uniform enforcement policy throughout and sets a national goal of desegregation or of integration.—of quality integration—which we still do not have. You should make it very clear to them that you are going to oversee their efforts in compliance and in bringing about an end to racial segregation. You should appropriate the kind of money which could make compliance a realistic effort, and then talk in terms of providing real money and sending it to school districts to reorganize their school districts.

Mr. MEEDS. Part of that can be done in this legislation. I am coming back and we will pursue the enforcement concept when I get more time.

Mr. Pucinski. Mr. Ruth.

Mr. Ruth. I have been at this since the beginning; the thing that concerned me the most was the purpose of the bill. It was $1½ billion to aid integration which I think the President was sincere in and he felt we needed to put some money in those areas where problems have arisen. I don't feel he was thinking in terms of additional law.

When you start talking about $1½ billion a lot of people are thinking in terms of general education, and in terms of special interest with regard to education. Then we are liable to end up with laws that are not applicable all over the country, or we are liable to start talking about racial students and teachers and the like, which is important, but I do not feel that it was the purpose of the President's bill.

Even though it was changed a great deal from Mr. Hawkins and Bell's bill that came from the President's original idea, we are still referring to it as the administration's bill. I would particularly like for Mr. Mitchell to address himself to the nature of our getting away from the true purpose of the original bill.

Mr. Mitchell. You are right Mr. Ruth that the President in this proposal was proposing help to the schools that were under court orders in the South.

I think what the President had not been advised on was the fact that there were areas outside of the South which were under similar court compulsions which had problems of racial segregation that they were trying to wrestle with and did not have the money with which to meet those problems.

Certainly I would say in my conversations with the chairman and with Mr. Bell, those facts were discussed at great length so I have reached the conclusion that this would really just be a starting piece of legislation.

If we want to give priorities to the areas where the problems are most acute, whether in the North or the South, I think that would fall within the President's general purposes. But I believe that we must realize that as we shape this legislation, it will not just be for a fiscal year 1971–72, that it is really going to be a thing that will be with us for a long time on a very expanded basis and therefore we have to think in terms of how it would work more or less across the board.

Mr. Ruth. It is a 2-year bill though and of course Mr. Pucinski and I have discussed this, whether there should be legislation drawn up specifically for 2 years or indefinitely.

Would you say that the Hawkins and Bell bill met somewhat this idea which you are talking about?

Mr. Mitchell. It certainly did. I think the basic problem that we had in NAACP with the bill was the two amendments that were added to on the House floor. That is why we had to change our position from supporting it as we had, to opposing it in the Senate, because there was first the amendment with respect to busing and second, there was the amendment with respect to discriminatory assignment of children which we thought would lend itself to internal segregation of children in the schools.

We did feel also that it could have been improved by having attorneys fees. That is a very vital thing but aside from those two basic amendments we were prepared to support it.

Mr. Ruth. Those people who were opposed to the bill were shouting busing as loud as they could, because that is a good way to defeat a bill. I don't think you should be taken in by it.

Mr. Mitchell. I would say in fairness to the southern members as far as I could detect of their position, those who were really interested in education, they would have been just as happy to drop the busing amendment and forget about it because they were interested in getting the money and they knew the issue of busing was a fake.

But I am sorry to say that it was some of the northern members who injected the busing issue and really put the southerners in a political position where they more or less went along.

Mr. Ruth. Thank you very much.

Mr. Pucinski. Mr. Hawkins.

Mr. Hawkins. May I, because of time, indicate my personal thanks for the testimony and the contribution made by the three witnesses. It goes without saying they have done a remarkable job. Had we had this testimony last year I think we could have had a much better bill.

May I ask I suppose Mrs. Martin, I think you dealt with this in your testimony.

It seems to me that the problem before this committee—and certainly it is a problem that I face being coauthor of two different bills—is a basic approach that that committee or this Congress should take in this field. It seems to me that the difference in the Mondale approach is a more positive goal set to actually achieve integrated quality education, not only in line with the constitutional mandate but I believe that it was stated by Mrs. Edelman in her testimony, even the President in citing the Coleman report indicated that this was the approach that should be taken, as opposed to the administration bill which apparently does not carry out some of the statements made by the President of a form of token compliance with the law, with a decision which is 17 years old.

Would you agree that in effect what the Office of Education did was to simply accept the approach that all that was needed in the expenditure of the emergency money was to get token compliance with the law rather than to actually verify whether or not efforts towards doing more than that—that is, moving towards quality in education—integrated education, was being done?

Mrs. Martin. I am not certain that they even require token compliance. That is one of the big criticisms of our report. There are school districts that were funded under the ESAP program that were not eligible even under the barest of requirements—school districts that did not even have terminal desegregation plans, which is the most minimal requirement for participating, and school districts that were violating their own desegregation plans, either court order or HEW. There were districts that were violating specific requirements of the ESAP regulations. That is not tokenism. If you think of tokenism as complying with the standards that are set out, with not being aggressive and moving ahead, our concern is that many of the districts did not reach the level of tokenism.

Mr. Hawkins. You made the statement that many of the approved applications indicated that the funds would be used to meet the ordinary cost of running any school district which obviously was in violation of the law.

Would these approved applications indicate that the agency could have anticipated that the money would be misused.

Mrs. Martin. Yes, sir. It is our opinion that the Office of Education had 36 hours to approve applications. You cannot within that short period of time evaluate what a school district really intends to do when you have that many to look at. It was a very fast operation. And the face of the applications were clear; yet the districts were funded.

Mr. HAWKINS. Six months ago I was willing to give the administration the benefit of the doubt and to believe that because of the emergency under which they were operating and the fact that this was put together hastily, that the passage of a bill giving them additional money with stronger safeguards would correct this situation.

Are you saying that, even with the strong guidelines that were adopted at that particular time, the administration knew what it was doing and obviously should have anticipated some of the findings that your group subsequently found?

Mrs. MARTIN. I think that is right. On the Senate side, a number of individuals brought this to the attention of the committee and we think that is one of the reasons why the regulations were strong. They spelled out specifically what kind of activities were prohibited. But it was in the administration of the program that all this seemed to be abandoned, and the only real emphasis was to get the money out to as many southern school districts as possible.

Mr. HAWKINS. Under the administration bill which Mr. Bell and I have reintroduced, there are two provisions which we ourselves inserted last year. One provides for a State allocation of the money so every State would be guaranteed a minimum amount.

Maybe you might not have time for the other questions. But with respect to that concept which we ourselves added to the administration bill—it was not their idea to begin with—but we thought we were protecting all districts in not allowing the administration to simply buy off recalcitrant southern districts.

What is your opinion of that particular concept?

Mrs. EDELMAN. We support that. We have no difficulty with that concept.

Mr. HAWKINS. With respect to the categories which were inserted in the bill providing for categories of defining different districts in the process of desegregation do you disagree with this?

Mrs. EDELMAN. We do have problems with this, again because of the absence of standards. While the chairman may think there is not a specific standard set out in the Mondale bill we think "substantially" means something. We had the understanding that it meant 10 percent. We think it is important to have this money go only into integrated situations. At least in the Mondale bill, we are sure the money is going only to integrated schools, whereas in the administration bill it is going into a district which may have all black schools or many all black schools or many substantially segregated schools.

Mr. HAWKINS. Under the administration bill would it be possible to get the money merely by busing in one busload of black children into a district without actually complying with the law itself, but by busing in one load of black children?

Mrs. EDELMAN. We think the administration bill would permit one Negro child to be transferred to a white school and make the district eligible. We think that would encourage tokenism. It would require no substantial performance.

Mr. PEYSER. I am trying to determine from the testimony that has been given here this morning what the basic problem seems to be.

Now, I gather basically we are certainly in agreement that the administration has endeavored to tackle this problem and I guess in reality over the last 2 years more steps have been taken to further the actual cause of integration than in the past 15 years, but the problem seems to be sitting down on the basis whether the enforcement of this program has been best handled.

You have cited, Mrs. Martin, a number of examples of violations of the program that you have called to HEW's attention. Of course personally I have no questions that there are going to be a number of violations not only in this program but in all programs where the Federal Government has vast programs of this nature, therefore violation, and there are things happening that should not be happening.

Frankly, I am very thankful for groups such as your own in the chosen area you are in that are looking at this. I think a public involvement is absolutely necessary in looking at all of these programs right at the local level.

The same thing is true in the environmental situation today. So what you have uncovered I don't think is an unusual problem nor do I think it is a specific fault of the administration intent.

I think that what we are looking at are problems of enforcement in following up on the local level which hopefully your group is going to continue doing.

My question here really gets to the point of, do you think that the real problem here is the bill that is involved—whether it is the Emergency Act or any of the bills that may be involved—do you think the problem is with the bills or do you think it is with the ability of HEW or whatever the enforcement agency is to carry it out to your satisfaction?

Mrs. MARTIN. I think it is both. Let me say it is time for us to stop playing games. If we really are talking about an integration bill, we should try to build in the kind of safeguards that will assure us to the greatest extent possible that we can avoid those kinds of problems.

At the local level, I agree with you. There are some people who need this kind of protection. They are subject to all kinds of political pressures. If shcool officials are given a pot of money without any kind of direction, they are subject to political pressures and they are looking, for the kinds of support they need from the Government to really deal with this problem. They are not going to be able to do it if the bills' language is very loose. They need something specific.

I was the Director of the Office for Civil Rights 2 years ago. From my dealings with school people, I know this is exactly how they function. They want something that is specific, that protects them from the politicians in their communities.

Unless HEW has the congressional backing, it is not going to administer a program from a position of strength.

Let me speak from experience as a bureaucrat. You have to protect people at both the local level and the bureaucrats that are running the program. Congress has to do that.

Mr. PEYSER. The main question I find here is that HEW—I don't know specifically—feels that it does not have the ability or the enforcement rights that you think they do. You think they need more and they would express an opinion perhaps that they feel they have adequate support through the legislation but the problem is getting all of these things carried out at the local level.

Now, do you feel that the local problems that we are speaking of represent a majority of all the attempts at integrating a school or is it a minority situation where a small percentage of schools are involved in this problem.

Mrs. MARTIN. I think it represents overwhelming majority.

Mr. PEYSER. You feel that the program is grossly inadequate all the way through?

Mrs. MARTIN. The program is small. It was only $75 million and limited primarily to the South. Most of the school districts had problems in administering the program. I predict if $1.5 billion or $10.5 billion is appropriated you are going to have the same problems unless you have clear and specific standards for the local people to follow and for the Government to follow in administering and monitoring the program.

Mrs. HICKS. May I ask you one question?

Do you think that we should take a better look at the way the Federal funds are now being expended before we legislate more funds in a new kind of programing?

Mr. MITCHELL. I see no reason why you cannot do both things at the same time. I think a fact of life that we face with Federal money is this. Once an appropriation is set up two forces begin operating.

One force is designed to see that the money is spent as quickly as possible and the other force is designed to try to spend it in whatever way the recipient wants to spend it without regard to the federal requirement.

I think this is what has caused the trouble with respect to the $75 million. I think that is what causes the trouble with road building and any other kind of Federal appropriation. Therefore I would say we need to take a searching look at all of our Federal expenditures and also try to establish fool proof safeguards

I hope that will be done but I also hope that it would not operate to stop this kind of program because all of us know that the schools are in a crisis and they do need the money.

Mr. KEMP. Thank you very much, Mr. Chairman.

Would it be fair—and I will have anyone answer this, Mr. Mitchell or Mrs. Edelman or Mrs. Martin—would it be fair to characterize your testimony or summarize, at least in the release today of the six private civil rights—would you say your criticisms are summarized in that response or that release?

Mrs. MARTIN. Is it a press release dated in November?

Mr. KEMP. Yes, sir.

Mr. MITCHELL. We as NAACP were not parties to this release. I would like to explain that the legal defense fund is a separate corporation. Because I don't remember all that was in it I could not commit our organization to its contents at this time. I might after I read it but I could not at this time.

Mr. KEMP. In view of the fact that this legislation's design and intent were somewhat different than in past administrations, could you find some things that you might agree with? Do you find any manifestations in the intent of this legislation that it actually heads toward the desire not only to produce greater quality education but also quality integrated education?

Mr. MITCHELL. I think there is a need to put this whole business in perspective.

For years around here we have tried to get money to aid education per se and during that period certainly our organization and many others have always argued that if we are going to appropriate federal money it ought to be spent on a fair basis with no discrimination.

Finally we got title VI in the 1964 act which had as its purpose making certain that when money was appropriated it was spent on a nondiscriminatory basis.

First there were legislative attempts to diminish the effectiveness of that title. Then there were administrative attempts to diminish the effectiveness by changing the way the money was spent.

If the Government had not tried to diminish the legal effectiveness of title VI, if the Government had administratively done the job I do not think we would have needed the kind of program which is now before us. But the fact of life is that the administration did not properly enforce title VI so now we are in a situation where we need the money.

Our organization through its Executive Director Roy Wilkins was the first to come out in support of the President's bill. We took the position that if the Administration was going to attempt to remedy problems of segregation by spending money then certainly we would want to perfect a bill but we would not want to oppose it.

In the consultations that I personally was fortunate enough to have with some members of this committee it seemed to me very clear that segregation was not just a problem in the South. It was a problem acute in Los Angeles, Chicago and therefore if we could from this instrument perfect a means of giving assistance to all the schools that needed money we wanted to do it and that is the spirit in which I have come today.

Mr. KEMP. My point is, cannot this spirit be used as a base for constructive action. Cannot we add to this bill the type of constructive reform or rewrite those sections, for instance section 8 having to do with the faculties and the administration?

Mr. MITCHELL. This is the whole crux of my testimony.

Mr. KEMP. If there was no intent to imply that affirmative action was not to be taken in terms of integration, couldn't that section be rewritten? Couldn't we use that as a base?

Mr. MITCHELL. I think the problem—and I can only speak for NAACP—the problem we have with the administration with respect to school desegration is in court—the administration came to Supreme Court for the purpose of trying to slow down school desegregation. This was the first time in all the years since 1954 that the Solicitor General in the Department of Justice actually went to the Supreme Court for the purpose of trying to slow down school desegregation.

The administration also really emasculated the enforcement of title VI in the Department of Health, Education, and Welfare. With that kind of background, you necessarily wonder about what intentions lie behind what seem to be very good suggestions.

We have taken those suggestions in the spirit that they have been offered and we have tried to support them and made recommendations for improvement. But I think we have to face the fact that there is a tremendous amount of distrust among members of minority groups because of the total background of the way the administration has handled the question of school desegregation.

Mr. PUCINSKI. We will back to that question.

Mr. Quie?

Mr. QUIE. Mrs. Edelman, on page 9 of your statement you say, "After 17 years of Brown, only 38 percent of black children in the Deep South and 28 percent of black children in the North and West are in majority nonminority schools."

What would be the possible goal we should consider? Suppose in this last 17 years we had seen speedy program at work, so there was not a problem of segregation either de facto or de jure. It was all eliminated. What percentage of the black children in America do you think would attend schools where the majority were nonminority children?

Mrs. EDELMAN. That is a complicated question.

I don't know if I can answer in terms of percentages. The chief goal of every school district is to provide quality education for all children. I hope it would be not all blacks or all whites. I think what should be pointed out is that the great majority of school districts in this country are technically subject to desegregation. They are not all in Chicago.

So in the middle-size American cities in the South and where the majority of black and other minority children live we can, without a whole lot of difficulty, without a whole lot of busing, desegregate and bring about quality integrated education.

And there are other things that can be done but we have not had the money or the will to do that.

If I were to summarize, I would say we would have stable quality integrated schools, and school systems wherever possible for all the Nation's children.

Mr. QUIE. The only schools where it might be acceptable for a majority to be so-called minority students is when the geographical area around the school would be a majority of minority people.

Mrs. EDELMAN. Yes, sir, but by that I am not endorsing the neighborhood concept.

Mr. QUIE. I am thinking of an area larger than just around the neighborhood.

Now then I would like to go to the educational park concept because I have gotten away from that. I don't think much of the educational park. That is why I want to talk about it. I would rather discuss the problems where I have a question. My feeling on the educational park—and I think we are talking about elementary and secondary education—there is a tendency to isolate the children in the educational park and the education being isolated from community.

I have come to the conclusion that we ought to involve the community much more at the elementary school level especially than we have in some of the large city schools the way it is now.

Mrs. Edelman, you talked also about a shortcoming of the administration's bill in not providing for parental or community involvement.

Don't you get away from the parental and community involvement in the educational parks?

Mrs. EDELMAN. Not necessarily. In some ways, yes. If the school system makes enough of an effort to involve parents as teacher aides, have viable PTA's, I think parents will be just as active in educational parks as many of them are in the private schools of Washington which are conveniently inconvenient.

The point is we may have to give up something. If it is making it more difficult to have parents involved in order to get children out of racial isolation, I think the sacrifice, will be worth it. Involvement in educational parks may mean moving children greater distances, but I think the value will outweigh a decrease in parental involvement.

I think some of that might be overcome by increased effort on the part of the school system.

Mr. MITCHELL. I would like to comment.

I have the good fortune not to be an expert in education. Therefore I try to look at these things from a strictly commonsense point of view. It seems to me if you take Minneapolis and/or St. Paul, both of us know you have an enormous number of people there who want to get rid of school segregation.

Yet operating against us is the neighborhood picture. Now nobody has come up with anything that would really meet those problems. The nearest we have is the suggestion that we might experiment with education parks and the Mondale bill earmarks a certain amount of money, I think quite properly, because since it is an experiment I doubt whether an administrator would have the courage to do it unless Congress had authorized him to do it.

The problem in the Twin Cities goes back to the 1930's. I remember in St. Paul for example there were two schools at the grade school level. One was the McKinley School and the other the Maxwell School which were attended predominantly by Negro and Mexican children.

There was not any way to get those schools integrated because of the neighborhood pattern and I fear that is still the case with respect to some of the schools in Minneapolis and St. Paul.

So I think the virtue of the education park is it gives us an opportunity to experiment. The Mondale bill does not suggest we build a whole lot of educational parks all across the country but it is in my judgment a valid education experiment.

Mr. QUIE. I guess I would not object to one experiment to see how it would work.

From your testimony it seems that the educational park concept is something that would be beneficial all across this Nation. In my opinion, it loses so much of what you have been attempting to achieve in developing community responsibility.

Mrs. EDELMAN. I endorse Mr. Mitchell's remarks. There is one way of accomplishing desegregation. It ought to be tried. When you think of huge educational parks where you are dealing with thousands of students, I have problems there. But you have to use every approach to desegregation and be flexible.

Mr. MITCHELL. I believe Senator Mondale thought of it in terms of experiment. He had his eye on Pittsburgh as one place where it was intended that it be tried but somehow it came to grief because of a lack of money and other factors.

I am sure that he as an advocate of this does not think of it as an across-the-board proposition. Certainly in my testimony I did not intend it that way.

As I remember the Mondale bill earmarks something like 10 percent of the funds for that purpose which is a very modest sum of money. It might even be that we would not have more than one to start with as a guide.

Mr. QUIE. $150 million.

Mr. MITCHELL. If we get over the hurdle of a serious racial problem in our cities with respect to public education, I think it would be worth $150 million. I think we ought not waste the taxpayers' money and we ought not be capricious in the use of these things designed to accomplish something good, but I think if we can experiment as we should with electronic devices and chemicals and things of that sort, we can do a little experimenting with respect to the life of our children, if the purpose is to build a better country and a better educational opportunity.

Mr. **Quie**. You have, I think, made the need of outside evaluators in judging Federal Government's effort in education very glaringly apparent. I don't say just as to the $75 million but all across the board. You did it on title I.

I don't believe we can depend on the local school people to do their own evaluating. It is not natural for someone to point out their own mistakes. Just like your reaction to Congressman Bell. You would like to have him point out where you made a mistake rather than you tell him where you did it.

I recall the study of the CCC Camps when they closed them. One of the best parts of the education program was the great reports on the evaluation.

Mr. **Pucinski**. The testimony this morning clearly indicates that there have been some serious shortcomings in the administration of the initial $75 million but the thing that troubles me about this testimony is that it is based, insofar as the evaluation is concerned—not now referring to the observation that you have made about the different bills—but on the evaluation itself which is based on a study made between September 18 and 29, I believe, 1970, 6 months ago, 2 weeks after the first money was released by the Federal Government.

I am wondering is there anything, Mrs. Martin, more current than the study that was made between September 18 and 29 on these expenditures which we could bite into?

I must say with all due respect and as Mr. Quie said, you demonstrated there has to be some outside oversight.

In accepting your findings at face value, without challenging at all the credibility—because I am sure the report was prepared by conscientious people, one making a serious contribution—I am wondering whether or not there is something more current than that.

Mrs. **Martin**. We understand there is a GAO report which is to be released soon. We do not have a copy of that. Perhaps you as chairman of this subcommittee can obtain a copy.

Mr. **Pucinski**. Thank you for calling our attention to that. We will undoubtedly want to get that.

The other part that troubles me about your testimony is that it is based on an analyses of a program that was carried out under extremely questionable criteria which we had carefully tried to correct without waiting either for your report or for any other findings.

We tried to correct it last year with the cooperation of an awful lot of people including Mr. Mitchell who had been closely consulted and I belive your own task force was closely consulted last year.

We tried to anticipate some of this criticism and we also anticipated the shortcomings in the authorization under which they were proceeding with the $75 million. I wonder if we could discuss with you how you feel about the criteria which we have written into either bill eliminating a repetition of the shortcomings that you found, or if you feel that neither bill has sufficient criteria to eliminate the shortcomings which are found. I would like to know that.

Mrs. **Edelman**. I can begin. I think you could strengthen and keep from wasting or perpetuating the same kinds of mistakes if you build in a precompliance review to insure that no district woud get money if it discriminated.

This was not done. HEW promised us they would do this. They did not.

We think the complaint procedure which I mentioned in my testimony would help assure against wasted money.

I think the waiver procedure, which is not in your bill, makes it more difficult for districts which have violated the assurances. If they are really interested in desegregating, they will not object to meeting higher performance requirements. I don't think all these precautions will insure against waste, but we think that would give a better chance to insure the kinds of problems that occurred with the $75 million will not reoccur.

Finally, we would carefully limit the purposes for which funds can be used rather than including general language permitting money to go for general aid which was true under the $75 million and which we contend is true in the administration's pending bill.

You would permit special programs under this bill for gifted and talented children. What does that have to do with desegregation. If this is a desegregation bill, then it seems to me this kind of program should not be funded.

We think limiting language should be built into your bill. We would be pleased to submit a memorandum with regard to language we think is loose and which would be subject to abuse and to suggest alternative language.

We have done some of that in our testimony. We will be glad to do more if you so desire.

We think there are specific safeguards which would strengthen the bills pending before this subcommittee. With the appropriate kind of safeguards and with the appropriate kinds of oversight by this committee, we hope new legislation will result in better expenditures of money.

Mr. PUCINSKI. I think, Mrs. Edelman, perhaps we ought to spend a session perhaps in committee or out of committee, and I am willing to meet with you anytime you wish to go over this legislation, because I have a feeling that somewhere along the line we are not communicating.

The main thrust of this bill was rewritten by the subcommittee last year, and a tremendous amoung of input went into this bill before it finally came out of committee. One reason why it came out as late as it did last year is because we were really wrestling with some of the points and problems that have been raised.

But when the bill finally came out of the committee, its main thrust was a realization and recognition that quality education for all children is going to help stop the resegregation. We found that the No. 1 problem in America today is resegregation.

There is testimony before this committee that an all-white school becomes integrated and within 36 months becomes resegregated. And why does it become resegregated? Because to a great extent the white youngsters for whatever the reason may be, but usually the reason is a fear, grounded or groundless, and usually groundless, there is a fear that somehow or other integrating a school diminishes the quality of education in that school.

So the main thrust of our bill was to provide school districts with the additional funds that they need to improve the quality of education in an integrating school so that you would not have the flight of families, so that you would arrest this flight, and so you would stabilize these schools instead of seeing these schools become resegregated.

Now you can shrug your shoulders. You can argue with me, you can challenge my statement, which you are welcome to do, but the fact of the matter is that there is testimony before this committee which has not been disputed that indeed schools are being resegregated, and the main thrust of the legislation made by this committee last year was to stop this, because once a school becomes resegregated you have no place to go.

You cannot go back to the courts. You cannot go in place. This school has become resegregated, and you have solved nothing.

So we set up this money, and you tell us about criteria. The bill that our committee reported out—Mr. Mitchell testified here and we are talking about the tipping school. We were discussing about when does a "tipper" come in and when does it go out, and Mr. Mitchell points out this is a very difficult formula to arrive at, but he says the education department of NAACP has suggested that it is better to rely upon discretion of the executive branch of Government in this kind of situation.

So we wrote in this bill precisely that philosophy. What are the criteria for approval under the administration bill.

> When considering whether to approve any applications submitted under the Act, except for those submitted for funding of programs for children from linguistic minorities, the Secretary must look at the affected school district's need for assistance in the planning for desegregation or integration.

You said, Mrs. Edelman, that conceivably one black youngster in a school would constitute an integrated school. I doubt very much if the Secretary or the Office of Education or any responsible person administering this act would accept that as a bona fide valid desegregation plan.

On the contrary, we say the plan for desegregation or integration must be approved by the Secretary and the particular program or project to be funded, applications submitted by eligible school districts, and those submitted by public and private nonprofit agencies are all subject to this scrutiny.

The school districts' need for assistance would be measured by number and concentration of racially isolated children, the financial need of the district, the expense and difficulty of carrying out the plan, and the degree to which public education is deficient in the district.

Now it seems to me—and I won't read the rest of the criteria—that we provide measurable stronger guarantees for improving the quality of education for all these children than anything that I have seen in the Mondale bill.

The only thing that I see in the Mondale bill is a massive effort to break up the neighborhood concept of schools in this country. They can talk about educational parks, they can talk about clusters, they can talk about everything else.

The fact of the matter is in our bill we have encouraged schools to move on their own.

Now why do you object to a school district trying to voluntarily carry a social responsibility and a moral responsibility in moving in a direction of integrating the school system? Why should that school system not be given some assistance if it wants to voluntarily engage in a program which will reach the goals you aspire to?

Mrs. **Edelman.** You said a lot. If I may respond, may I say I am here trying to anticipate what the Secretary may do. I can tell you what the Secretary has done, but we are here writing a law. As a lawyer my obligation is to see how language might be construed and to write in the best possible language to insure against abuses.

Taking your last point first and in terms of complete elimination of racial segregation, we certainly have no objection. I think that is one of the few provisions I can agree with. My problem is in looking at interpretations which have already been granted or been agreed to by HEW and by the courts.

I am a lawyer. I have brought many school desegregation cases over many years, and I am aware of the kind of relief sought and negotiated by Departments of HEW and Justice, I do know that both have accepted plans which have condoned the continuation of all black schools where that was not necessary and where meaningful desegregation could have been accomplished.

The loose language saying, "We will agree or condone or grant eligibility to districts which engage in the reduction of racial isolation" without defining "reduction" is subject to abuse.

Mr. **Pucinski.** We purposely did not define it because we did not want to get ourselves caught in the quota system that the Senate wrote. So what we have said is if a court defines it that is the order. If HEW defines it, that is the order.

Now you have title VI. You have title IV. You have more agencies that are involved in defining what is an acceptable integrated school system.

Mr. Mitchell tells the committee that the NAACP, education department takes the position that on these matters it is better to rely upon the discretion of executive branch of Government in this kind of situation instead of trying to have the Congress legislate the quotas.

Mrs. **Edelman.** I think the problem arises precisely because you have title VI, you have title IV, you have the Department of Justice and you have different standards of desegregation.

There are many very bad title VI plans which maintain segregation. I submit the problem is continuing segregation and resegregation because we have never had the kind of integration or desegregation which we need to talk about. So the basic problem is continuing segregation as well as the resegregation to which you have referred.

This Congress should take the leadership in stopping the kind of executive discretion which will have 100 different standards in various school districts, some of which will permit continuing segregated faculty in one district and token student desegregation in another district. Congress should make it a national goal to outlaw segregation regardless of cause forever, wherever it is, and set up national compliance program.

We are not asking you to set quotas. You could say we would like to have integrated schools in this country—quality integrated schools which would permit no more than 10 percent variation as a goal to which we could aspire.

I think you can write in the performance criteria which would continue to avoid in the future bad desegregation planning which arises throughout the South.

Mr. Pucinski. I have the highest respect for your views and your testimony but I have had a personal experience with the subject that I don't think many of my colleagues have had.

My children attended Amidon School here in the District of Columbia. My son for 6 years was one of three white children in a class of 27 black children. My daughter was the only youngster in her high school class at Western High School. So I think I know something about the subject.

The Amidon School did demonstrate, when it was a good quality education school, that all children can progress in education acheivement. Poor children, rich children, white children, black children.

At the Amidon School we had white children from very affluent families. We had black children from substantially middle-income families. We had black children from public housing and we had black children from poor families and broken homes. Yet because they had a good quality system of education in that school, the whole school was reading substantially above national levels. Above national levels at all grade levels.

Ninety-three percent of the children in that school were reading above national levels. Why? Because the Amidon School was a school that concentrated on quality education. And there was no talk about running and there was no talk about resegregation. And the school was integrated.

But then, when certain groups in this city decided that there was an abnormally large amount of money going to Amidon to provide this kind of quality education, and insisted that the Amidon School receive the same amount of money as everybody else, even though 70 percent of the school's population was nonwhite and it was an experimental school to do the very things you are talking about in this testimony, when that school dropped its quality education program, the middle-income black youngsters were taken out.

The middle-income white youngsters were taken out and it became a totally resegregated school and another disaster area.

So what I am trying to tell you, Mrs. Edelman, this bill was written by this committee last year with an emphasis on quality education as that instrument with which we can stop the resegregation of schools, youngsters moving out to private schools. You can talk all you want about Federal laws barring any kind of racial unbalance in schools, but you ignore the fact that in this Republic people can take their child out of school and put them in a private school as hundreds of thousands are doing.

So it seems to me that while I respect your testimony, this committee has spent a great deal of time looking at the totality of the problem. And we came along with a bill last year that we thought would make a substantial contribution.

Mrs. Edelman. I think we are having a communications problem because I agree with your analysis about the Amidon School.

It is precisely this kind of school which I see the Mondale bill emphasizing, both in terms of economic and racial mix. We are assuring only that those schools with this kind of mix and which can provide quality education and stability will get funded. That is what we want to foster. We don't think it would be fostered by the administration bill, and we do think it would be fostered by the Mondale bill. I think we have a communication problem.

Mr. **Bell**. I concur. If you have some suggestions—and I know there will be many of them—come before this committee before we mark up this bill. I am certainly concerned and desire to write a bill that will probably end up being some kind of a compromise, but there is one thing that nobody seems to have mentioned here today.

The chairman and myself and Mr. Hawkins went through this for several weeks of fighting on the floor. We must get a bill out that will pass the House. If you put the Mondale bill out today as is, I don't care what anyone says, it will not pass.

So you will get nothing. My point is we have to get a bill through that will pass. We have to get down to earth and quit kidding ourselves. We have to get through a bill that is going to pass and that is going to do some good. To that extent we are together.

But just as an example, as Mr. Mitchell mentioned in his statement, there was a group of people who got together and passed some amendments which Mr. Mitchell and I agree were unfortunate, and they hurt the bill.

Do you think they are not now going to pass unfortunate amendments? If the Mondale bill got to the floor, that would arouse so many that they would be completely able to scrap the bill. I think we can talk all we want about what we want to do—and I am as idealistic as you, but I mix it with realism and that is what I think we are facing today, some realistic aspects, that we must get a bill out that is going to pass.

Mrs. Martin the civil rights group found only 10 percent of the districts funded as of October 30 to have no evidence of questionable civil rights practices. HEW monitors did find violations but on a far smaller scale. Forty-two of the 132 districts had clear violations which raises the question: Was HEW using educational standards for determining a violation?

Or were they, as was your group, on sight inspections conducted in the same manner?

Mrs. **Martin**. I think the most important distinction is that HEW reviews did not use the same criteria we used. Most of the HEW reviews were before the ESAP program was in operation and they readily admit that.

As you will recall, the ESAP regulations have very specific requirements. We contend these requirements are title VI requirements, but they are not spelled out in an ordinary title VI review.

The requirement that no school district receiving ESAP money can give property or other aid to a private segregated academy is spelled out in the ESAP regulations. No school district can have segregation within a classroom, for any reason—testing or what have you—is spelled out in the ESAP regulations.

So when the majority of the HEW reviews were conducted, they did not use the specific criteria of the ESAP regulations.

Mr. **Bell**. HEW however used constitutional requirements did they not?

Mrs. **Martin**. Of course, but our review was based on both the Constitution and the specific ESAP requirements.

Mr. **Bell**. Did you read the regulations issued with respect to the $75 million?

Mrs. **Martin**. Those are the regulations I am talking about.

Mr. **Bell.** Then you have read them. Tell us how the standards were weaker than those applied by an HEW official scrutinizing the programs for title VI compliance.

Mrs. **Martin.** Let me read from an HEW report, perhaps that will clarify this. "At the same time however the title VI plan implementation reviews"—and those are the majority of the reviews they conducted—"were of necessity limited to assessing compliance of the student and faculty assignment features of the district title VI voluntary desegregation plan.

"As such they did not cover the question unique to ESAP of property transfers to private schools, nor did they focus in detail upon possible faculty discrimination other than to obtain basic information."

So in effect HEW is saying, "We used only the title VI standard and not the specific ESAP standards which are much higher and are spelled out in detail."

Mr. **Bell.** Would I be right in assuming that ESAP standards are stonger than title VI?

Mrs. **Martin.** We think they are the same. ESAP standards are spelled out. We think that a school district cannot transfer property to a private segregated academy but we think that is a continual standard. It is spelled out in ESAP.

So when HEW monitors went out they did not look specifically at that kind of conduct. They say so in their report, except in 48 districts.

Mr. **Pucinski.** Thank you very much.

Mr. **Ford.** Mr. Chairman, I find myself agreeing with the factual situation stated by both the chairman and Mr. Bell but coming up with different conclusions.

With respect to Mr. Bell's suggestion that we should start the compromising here, I suggest, on the basis of my 6 years of experience on this committee, there is a relatively high degree of commitment toward the objectives of this legislation on both sides when compared to the pattern that you might find in the House as a whole.

So I suspect that no matter what bill we bring out of this committee, it is going to be weakened. It is in the nature of some people out there, if they do not weaken a bill coming from this committee, they don't feel they had a good day's work.

With respect to the Amidon experiment, I agree with all the facts, but again I come down on the opposite side on the conclusions to be reached from that.

We had testimony from Norman Drachler, superintendent of schools in Detroit, last year that he conceived of the use of this money as being most valuable to the efforts that he has been making in Detroit to finance his magnet school concept, where he is trying to prevent the very thing that the chairman described as happening in Amidon with regard to what the Secretary might do and the difference.

Mr. **Pucinski.** What did he say?

Mr. **Ford.** He wanted to use the money to keep from freeing the other magnet schools, to actually attract people to the school; use the magnet concept to attract people into an integrated setting and to encourage people not to flee from the setting as it became integrated because they would be fleeing to something less in education.

With respect to what the Secretary might do, given the opportunity to proceed with regulations, apparently he has taken a position. I notice in his testimony before the Senate, though he directed himself to the provision of S. 195, the Javits bill, he was critical of that provision in the bill that would prohibit a school district that had disposed of property to private academies for the purpose of aiding segregation. He felt that that was not needed in 195 but I notice that Mr. Bell's bill has it there, and presumably tomorrow he will testify, as he did before, against that provision.

He says he is not against what the provision attempts to do but he does not think it is necessary.

Now our experience already indicates as Mrs. Martin has told us, that there was a similar regulation in the regulations as such. It seems to me as a lawyer who has not had much opportunity to really examine where you would be trying to get your handle on something to get into court, that if we cheerfully spell out in the legislation a legal requirement that both the Secretary and the local school administrators would be subject to being defendants to a law suit brought by a parent or parents who felt the law as not being followed, that seems to me to be an essential difference.

Whether we have a Democratic or Republican administration, there is great pressure brought to bear, particularly at election time in various parts of the country not to push too hard on a particular phase.

I would like to protect them from that pressure by having them have to respond to a Federal judge in a way that indicated that they could shrug their shoulders and say to whoever the presidential candidate was "I am sorry, Boss, I did not mean to get you into this position but I am the defendant and not the plaintiff," and I think if I were sitting in the Secretary's position I would like to have that.

With regard to the idea of protection, over the years we have had topnotch school administrators from around the country tell us on this committee that in their community they can only do that which they are required to do.

When we went through this whole business of examining title I as a form of categorical assistance we had people like the superintendent from Cleveland, the superintendent from Atlanta, superintendent from Detroit, and various other cities who said "If you give us that money and do not direct us to use it in particular types of schools within the city, it will never get there. I would like to do it but I don't have the community support to do it."

Our own experience in the past year in Detroit indicates that a school administrator and even a school board that tries to move too far ahead of community feeling gets slapped down.

We had a school board recalled from office as you know and replaced by a whole new board which may or may not have the same kind of commitment to the objective that the original board was seeking.

I have talked to southern superintendents—who we have not embarrassed by asking them to say this on the record—over and over again, trying to learn for myself specifically in the only way available to me, in private conversations, how far must we go on providing rigid enforcement of the Civil Rights Act.

And repeatedly they have told me "We can make this work. My faculty wants to do it. Even some of my school board wants to do it, but if we are ahead of the Federal Government even 1 foot we will be slapped down by the local community.

So you have to put us in a position where we can go to the community and say 'We have to do this because we do not have any choice'."

I am satisfied that there is a tremendous reservoir of talented school people at the local level that want to carry out the national goal of integrated education that we are talking about here but will not be able to do it unless the Federal Government keeps the heat on.

I cannot conceive of writing any kind of legislation in this field with the intended purpose of this legislation that does not go further than we have gone before in going down the line to not only take the constitutional minimal requirement, the heretofore passed legislative requirement, but also those things that many of us are now willing to accept as truth.

Because we have heard them so often from so many concerned people that what we really have to talk about here is the end product to wit, an integrated educational experience that is integrated not only on a racial basis but on the basis of all the socioeconomic differences that people find in any given community.

When we keep talking about how to attack a little piece at a time of an already existing segregated system and in a little way desegregate this system, we are missing, it seems to me the whole goal that I thought the President was talking about when he described this legislation before the specifics were set up.

I was concerned also last week—and this does not directly affect this panel—when we had a briefing here by Mr. Otina of the Office of Education outlining to us the concepts that were going to be involved in the special revenue sharing.

We asked him specifically, with all the difficulty we have had heretofore in enforcing title VI of the Civil Rights Act, how will we enforce it if you give this money without strings attached, using the vernacular, to Governors around the country.

Quite blithely he looked at the committee and said, "We will have to rely on the assurance that when the Governor gets the money that he will enforce the Civil Rights Act."

After having made that speech I would like to ask you if there is anybody sitting at that table that really believes that taken on balance the Governors of this country, whether they are willing to do so or not, are going to be able to enforce title VI of the Civil Rights Act if we give them the money and say "Now go enforce it," rather than withholding it before the enforcement takes place.

Thank you very much.

Mr. MITCHELL. I would want to say something here which I think ought to be said. I assume in this language that is proposed with respect to substantial compliance, it is kind of a word of art in which you are really calling attention to the fact that the courts have considered extensive litigation on this question. Any administrator looking at that word would not just look at as a word in a dictionary but would look at it in the context of numerous court decisions and what it means as a matter of law.

I therefore think that as far as is humanly possible, we ought to try to incorporate into the legislation guidelines that will do the kind of thing that Mr. Ford was talking about, that is to say to an administrator, "You don't have the right to decide whether you are going to do this. The law says you must. This is essential in all administrations and at all levels."

The reason we have these Whitten amendents and things of that kind in the bill is when this kind of legislation comes to the floor very often people who ought to be against those amendments just are not. There they go in more or less by default. If you look at the totals you will see always they get in by very small margins. Sometimes this is done for purposes.

Mr. Ford. I suspect under the Reorganization Act that Mr. Bell and I both supported we will do better on these amendments with recorded tellers.

Mr. Mitchell. That was the next thing I was going to mention. I hope that this new requirement where we do some recording of votes will cause change so we won't be losing by eight or nine votes when these things come up.

But assuming that we get everything that we are interested in, all the safeguards, the right kind of administrators, every kind of thing you could want, I respectfully submit that we cannot give up the right and the duty of the Congress acting through this committee or such subcommittee as we would designate from time to time to review these programs, to see whether they are in fact doing the things that Congress intended them to do.

Under all administration, whoever is able to get enough political muscle is going to come in and attempt to thwart the will of Congress as long as it is just the executive branch of Government handling it.

When you get a bipartisan group like this which is going to be looking over the shoulder of an agency and checking on it, then I think you will find more compliance with the intention of Congress in this kind kind of legislation.

Mr. Pucinski. Mr. Mitchell, you are absolutely correct. I again would hope that we could get a clear dialog between the witnesses and the committee, because we do have in this bill as reported out by the committee last year—and I underscore that because we had substantially changed the original administration bill—the provision that every school district applying for funds must make 12 assurances to the Secretary regarding his past conduct and its intentions for the future.

We not only want them to say, "Well, we have been bad boys in the past but we are going to be good boys in the future." We want to know what conduct was contradictory and in violation, and what steps have been taken to correct these things.

These assurances which will be contained in the applications with other relevant information will create a contractual relationship between the applicant and the Federal Government. If any of the assurances concerning his past conduct are false, or if any of the assurances regarding administration of the program are not fulfilled, the Federal Government will be relieved of its funding obligation and will provide to recover the fund already expended.

These 12 assurances provide—and I won't read all of them because I am sure you may have read them and we will put them in the record—but among other things, they provide that there is effective valuation, there will be no unlawful assistance to private segregated schools, that there has been no reduction in fiscal effort, that funds are not available from other non-Federal sources, that other information will be provided, that there is no freedom of choice planned to frustrate desegregation, that there are no practices within the schools which isolate or discriminate against minority children.

Mrs. Martin, don't you feel that in that bill there are the kinds of safeguards which are fully structured in the legislation that would assure against the very abuses you so properly pointed out in your findings and report?

Mrs. **Martin**. Yes, I do. But if there is a better way to deal with it, and we think the Mondale bill is a better way to deal with it, I would think this committee would want, as Congressman Ford said, to deal with it in the strongest possible way.

Mr. **Pucinski**. Would you then, anyone at the table, explain to me what does the Mondale bill mean when it provides in section V on page 6——

Mr. **Ford**. Would you yield on those assurances you just read?

Not sure how it got in there but I became convinced during the floor debate that some of my colleagues, particularly one from Mississippi, believed that when the word "unlawful" was put in there with respect to the transfer of property, that this was a major victory for local officials who did in fact want to make the transfer because he construed that to give the local legislators a means by which transfers could be effected.

It was on its face a lawful transfer. I thought that that went in as an amendment out there on the floor as one of the ways people thought they were broadening this language out to permit a practice we now discover coming.

I want to say on these assurances I think most of them were included in the amendment that I offered and you supported wholeheartedly.

Mr. **Pucinski**. Correct, and they were the Mondale amendments.

Mr. **Ford**. I am no longer as sure as I might have been at that time that they are really effective enough. I have reservations now about whether we went far enough.

Mrs. **Edelman**. May I make one suggestion, as the assurances are now in your bill and as they were in the ESAP regulations themselves. I think they should be strengthened. If they are not merely assurances, if they are instead conditions of eligibility, the school district does not get the money until it is in compliance with the provisions.

We all know it is difficult to get money back once it is given.

One of the differences between your bill and the Mondale bill is the safeguards and conditions of eligibility. The district can get money but it has to assure HEW through concrete kinds of things that they are not violating any of these requirements, whereas under your bill they just have to file a piece of paper saying "We never did this and we are never going to do it."

Mr. **Pucinski**. That is a very helpful suggestion. I know of no reason why it could not be incorporated as a condition of qualifying.

Mr. **Warden**. When Senator Javits introduced the administration bill, he picked up the language from the Mondale-Brooke bill which makes the safeguards conditions of eligibility as well as including the safeguards as assurances so he has it both ways.

Mr. **Pucinski**. I imagine we will have additional language to satisfy the apprehensions and reservations Mr. Ford mentioned here.

Mr. **Ford**. Mr. Hawkins is my copartner.

Mr. **Hawkins**. Quite a few of us are asking for the same thing.

Mr. **Pucinski**. Would somebody at the table explain for the committee the language in the Hawkins-Mondale bill on page 6, section 5, line 18, paragraph (A), "That the local educational agency has adopted a plan for the establishment or maintenance of one or more stable quality integrated schools."

Now I read this as a big old escape hatch which is not in our bill which would do the very things that you have been critical of in our bill, Mrs. Endelman. And that is that if I read this language correctly, it would permit the highest degree of tokenism because they could take one school—and the law says "Plan for the establishment and maintenence of one or more stable integrated schools"—they could take one school and say, "We said the requirements of the act and we qualify."

Now would somebody advise me if I am incorrect in reading the language that way.

Mrs. **Edelman**. Under the Mondale bill, you have the assurance that there is integrated education. Under your bill, you do not have that.

I refer to your own language wiich does the same and even less. On page 5, section (a), "A school district is eligible if it eliminates or reduces racial isolation in one or more of the racially isolated schools in the school district of such agency."

You have the same language without a definition which would insure less desegregation than you could get in the Mondale bill. There, at least you are going to have one integrated school.

Your bill is even weaker. We are not saying we think this is enough. We say at least we can be assured the money is only giong to be spent on integrated schools.

Mr. **Pucinski**. You still have not answered the main question. That here you have been making this great plea for the integration of a total system and Mr. Mondale's bill is directed at picking 60 or 80 school systems in the country and making out of these a model system for the rest of the country to draw on and emulate.

Yet when I read this legislation one of those 80 school districts could qualify under the whole bill merely by saying that they have one school which is stable, quality integrated.

Mrs. **Edelman**. Let me make our position clear. What we need is a national compliance program and secondly we hope there will be an amendment to this bill and the Mondale bill that would give first priority to funding the district that would completly eliminate racial isolation in the entire district.

Short of that, we think the next best thing is to fund those districts which come in with one or more integrated schools, and we would strengthen it in saying it would be a school that substantially reflects the economic and racial composition of that school population.

I would tighten that up to allow not more than 10 percent variation. But our point is that while this is not the end-all and we don't say the Mondale bill is a perfect bill, we still contend we will end up with more under the Mondale bill than under the language you have drafted in the administration bill.

Mr. **Ford**. On March 10 Commissioner Marland testified before the Mondale committee in the Senate.

On March 11 the Senator wrote a letter to the Commissioner discussing this specific point and the other point raised about the differences and he made pretty much the same point that Mrs. Edelman did.

I would like to ask unanimous consent that the Senator's letter, dated March 11, to Commissioner Marland be inserted in the record at this point.

Mr. PUCINSKI. Without objection it is so ordered.

(The letter referred to follows:)

U.S. SENATE,
SELECT COMMITTEE ON EQUAL EDUCATIONAL OPPORTUNITY,
*Washington, D.C. March 11, 1971.*

COMMISSIONER SIDNEY P. MARLAND,
*Department of Health, Education, and Welfare,*
*Washington, D.C.*

DEAR MR. COMMISSIONER: Your testimony before the Education Subcommittee February 10 devoted substantial emphasis to a comparison of S. 683, "The Quality Integrated Education Act of 1971," a bill, developed and approved by the Senate Education Subcommittee last session, which I introduced with Senator Brooke and 17 cosponsors, and S. 195, "The Emergency School Assistance Act," the Administration bill as introduced by Senators Javits and Griffin.

Your comparison, in my judgment, is misleading, and reflects serious misunderstanding of some important provisions in both bills.

1. You stated: "The Administration bill focuses on planning for desegregation which has system-wide impact and involves large numbers of students. In contrast, S. 683 limits its attention to the establishment of one or more stable quality integrated schools without regard to their relationship to other schools of the local educational agency in which they are located."

I cannot find a "focus" on "planning for desegregation which has a system-wide impact and involves large numbers of students" in the Administration bill.

Section 5 of the Administration bill provides for financial assistance to two broad categories of school districts—districts which voluntarily "reduce racial isolation" and districts which are desegregating under legal requirement.

Districts voluntarily "reducing racial isolation" would be funded for programs: (a) "to eliminate or reduce minority group isolation in *one or more* schools in school districts", (b) "to reduce the *total number* of minority group children who are in minority group isolated schools", or (c) "to prevent minority group isolation that is reasonably likely to occur . . . *in any school* . . ."

Nothing in these provisions of S. 195 requires either "district-wide planning" or "large numbers of students." On the contrary, they would fund school districts to "reduce racial isolation" in one or more schools just as provisions in S. 683 would fund school districts to establish one or more "stable quality integrated schools." Thus, the two bills are identical in this respect.

Similarly, with respect to the second category—school districts desegregating under legal requirement—nothing in the provisions of S. 195 requires any new "district-wide planning" or "large numbers of students." The extent of district-wide planning and the number of students involved would depend upon court orders and Title VI agreements reached independently of applications for assistance under the bill. Most districts which would receive assistance under this category are now operating under court orders and Title VI agreements which are already matters of record. Planning for desegregation, if any, has already taken place, and the number of children affected has already been determined—and neither S. 195 nor S. 683 would require new district-wide planning in these cases.

Both bills contain additional provisions which bear on this point. Section 7 of the Administration bill establishes 6 criteria to be used in judging applications. These 6 criteria are all apparently to be given equal weight. Only two of them establish even a limited priority on applications which affect the largest numbers of minority group children. I would appreciate your opinion of the weight these two criteria would be given in relation to the four other criteria, which will in many cases contradict them.

S. 683, on the other hand, establishes very clear priorities. Section 9(c)(2) assigns priority to applications which place the greatest numbers and proportions of minority group students in stable quality integrated schools, and which offer the greatest promise of providing quality education for all participating children. Unlike the Administration bill, S. 683 contains no additional or competing priorities. It simply contains a clear statement of intention to fund first those districts which accomplish the greatest degree of integration in the context of programs of educational excellence.

I would suggest that the real difference between the Administration bill and S. 683 is not the presence or absence of district-wide planning, or the number of children who might be served. The real difference is that while S. 683 contains a careful, educationally based, definition of the stable quality integrated school, the Administration bill contains no definition of "desegregation" or "reducing racial isolation." Thus, the Administration bill would permit funding of token efforts in which a handful of minority students are scattered in one or more virtually all white schools, or efforts that "integrate" poor children without regard to the educational benefits of socioeconomic diversity. We would learn little about meaningful integration from $1.5 billion invested in this manner.

In addition, the Administration approach presents the danger that minority group students will participate on a less than equitable basis in programs funded under the Act. In a 40% minority school district, for example, under its "reducing racial isolation" formula, the Administration bill would permit funding an expensive program in schools containing only 10% minority group students so long as the minority students formerly attended isolated schools. These schools could receive funds for special curricula, teacher aides, and other activities. And yet, minority group students would receive a share of these new programs much smaller that is warranted by their presence in the population of the district as a whole. Thus, funding under the Administration approach might lead to discrimination against minority group students in the allocation of funds.

Under S. 683, school districts will receive assistance to establish schools which attain a meaningful level of racial and socioeconomic integration from which we can learn, with programs in which minority and non-minority children participate on an equitable basis, and which can serve as models for the remainder of the district.

2. You stated that "most school districts in the country are not eligible for assistance under S. 683." S. 683 presently limits eligibility to local educational agencies which enroll at least 1,000 minority group children representing at least 20% of total enrollnent or at least 3,000 such children representing at least 10% of total enrollment. Slightly more than 1,000 school districts which enroll over 85% of the minority group children in the country, will qualify under this standard. I firmly believe that some standard is required to concentrate funds in areas of greatest need, and assure that funds are not spread so thinly that the educational impact of the program is diluted. It may well be, however, that the particular standard that was developed in the Education Subcommittee last session, and appears in S. 683, is not the best one. I would welcome your suggestions for improving it.

3. You testified that "in districts with substantial but not majority-minority group population, the (quality stable integrated school) standard could encourage remedial action almost exclusively in those schools where racial balancing is easiest, leaving schools with high minority concentration untouched." In fact, the Administration bill itself specifically provides for funding the status quo or the "easiest" under the rubric "preventing racial isolation reasonably likely to occur" in any school with between 10% and 50% minority enrollment.

Although both bills might fund programs in schools in which integration has already taken place, S. 683 requires that those schools attain a meaningful level of integration, and contains provisions designed to give priority to those districts which place the greatest absolute numbers and the greatest proportions of minority group students in quality integrated schools.

4. You testified that under S. 683 school districts such as Washington, D.C. (90% minority) would be required to establish heavily minority schools in order to qualify for funding, perhaps by causing a school presently 30% minority to "resegregate". This allegation is based upon complete misconception of the purpose and provisions of the bill. The bill specifically instructs the Commissioner to fund schools which he finds will be *stable* and which contain substantial proportions of children from educationally advantaged backgrounds. In a district like Washington, D.C. (90% minority) S. 683 does not seek to establish 80–100% minority "integrated" schools. For school districts with such heavy minority group concentration, within-district integration is not a practical approach to the education of most students. For such districts, S. 683 contains earmarkings for education parks, interdistrict cooperation, and special pilot programs to improve the academic achievement of children in minority group isolated schools. I believe that such initiatives, unlike within-district integration efforts, can be of substantial help to districts like Washington, D.C. in solving their overall educational problems.

5. Your testimony regarding the set-aside contained in S. 683 for educational television reflects basic misunderstanding of that provision. Section 19 is not intended, as your testimony indicates, to fund television programs developed by local community stations to support specific desegregation plans. (S. 683 would permit funding of such programming under Section 7(b)). Section 10 is intended to

support the development of not more than 10 television series on the *Sesame Street* model. These programs would use modern techniques of television programming—such for example, as animation and cartoon techniques—in an integrated setting, with the twin objectives of instilling academic skills and promoting better interracial understanding. It is our hope that projects funded under S. 683 would contain greater emphasis on all minority group children and would also, perhaps, include some programs designed for children older than those presently reached by *Sesame Street*.

6. Similarly, your criticism of Section 8 of S. 683, relating to education parks, reflects a basic misunderstanding of the purpose of that provision. Section 8 is intended to fund the construction of several model education parks. The section does not, as your testimony implies, attempt to provide a complete solution to the educational problems of any individual urban area through construction of a sufficient number of education parks. Although the concept of the education park has been proposed as one approach to the problems of urban education for a good many years, the cost involved has discouraged practical testing. The purpose of Section 8 is to insure that several education parks are established and evaluated.

7. Finally, I find your criticism of the provision for attorneys' fees under Section 11 of S. 683 most ironic. Your primary objection seems to be that the provision will "throw the burden of enforcement upon federal courts." I would respectfully suggest that the Administration has already taken this step through its decision not to invoke the Title VI fund termination procedure.

As you indicate, Section 11 in its present form is limited to payment of attorneys' fees, and costs not otherwise reimbursed, incurred in federal courts. It is true, as you point out, that lawsuits brought in state court would not ordinarily be included. This limitation presents no great difficulty because enforcement of the constitutional and statutory guarantees to which the provision refers present "federal questions," which in normal circumstances are litigated in federal, rather than state, courts. In several instances school integration suits pursuant to *state law* have been brought in state courts—perhaps the most prominent example is the Los Angeles case. To avoid the administrative difficulties to which you refer later in your statement, suits pursuant to state, rather than federal, law have not been included in Section 11. I have no objection in principle to the inclusion of such suits, however, and would welcome your suggestions for modification of the section to accomplish this result.

I cannot agree that within the context of the federal court system Section 11 would present administrative difficulties. Federal courts now assess attorneys' fees and costs in a variety of cases. Those most in point involve lawsuits under Title II of the Civil Rights Act of 1964 and VII of the Civil Rights Act of 1968 (pertaining to public accommodations and fair housing). Under Section 11 of this bill as under Title II and VII, the district court judge would assess the amount of the reasonable fee and of the costs incurred on the basis of affidavits and testimony presented by the litigants. The district court judge would enter an award which the Administrative Office of the United States Courts would pay in much the same manner that a bank honors a bank draft. The role of the Administrative Office of the United States Courts would be purely ministerial.

Far from requiring a new administrative structure, Section 11 simply takes advantage of the long standing procedure for awarding attorneys' fees. The chief difference is that the award will be paid from a federal reserve rather than by the losing party. This was thought desirable because the source of an award against the school district would otherwise be its education budget for succeeding years. I would point out that fees for the defense of such lawsuits are in fact paid from school district revenues.

Finally, you suggest several other programs on which the funds reserved for Section 11 might profitably be spent—such as, the expansion of OEO legal services, the addition of enforcement personnel to existing federal enforcement staffs, or the enforcement of civil rights laws with respect to housing.

But I also believe that fair and impartial enforcement of the provisions of statutes related to equal educational opportunity is essential to the success of any program which resembles those proposed in S. 683 or S. 195 and that the private bar is the most efficient, economical and independent mechanism available for this purpose.

* * * * * * *

I firmly believe that if we expect innovative, educationally responsive programs in integrated education to be conducted under the $1.5 billion authorization under discussion, we must establish goals and objectives. Under the vague outlines of the present Administration bill, however, it is difficult to achieve an understanding of the sort of program that the Administration wishes to conduct.

As I stated during the hearing and earlier in this letter, S. 683, developed by the Education Subcommittee, embodies a carefully defined program with established educational objectives. The Administration bill does not. Testimony on behalf of the Administration has not clarified its objectives. Our experience with the initial $75 million appropriation demonstrates beyond question that the time to determine the content of the $1.5 billion program is before, not after, its enactment.

I respectfully request that you provide us with a clearer and more carefully defined explanation of the purposes of the Administration bill, the kinds of programs it will fund, and the proportion of funds that will be spent under the different categories of eligibility.

Sincerely,

WALTER F. MONDALE, *Chairman.*

Mr. **BELL.** I would also suggest that the Commissioner's statement be included in the record.

Mr. **PUCINSKI.** All right. Any reply would be included.

May I get a statement from all or each of you as you wish on the fundamental difference between the two bills.

Now the Mondale bill would provide this assistance to a selected number of school districts around the country. And I have been around here long enough to know, and I think there is no better example than the impact bill, 815—874, that nobody around here likes to kill Santa Claus.

So what we do is we crank in "*x*" number of school districts in the country that qualify in the first instance for the Mondale bill and they set up programs and they develop curricula and various other things to comply with the bill and they begin relying on this legislation.

Mr. Ruth was correct when he said that anyone who thinks this a 2-year bill is kidding himself. You are not going to phase this bill out. The problem of integration is not going to go away in 24 months. I think all of us ought to know that and I am sure we do.

So what I am trying to do here is write a bill that is going to stand up and will be able to stand a test of time.

We take the Mondale bill and crank in "*x*" number of school districts in the first instance and they go ahead and develop programs relying on this Federal aid.

What happens with the Mondale bill is it locks in a situation where those school districts are going to get help in the perpetuity but, what about all the other communities around the country that for all kinds of reasons, whether under a court order or whether it is under HEW plan or whether voluntarily—and it seems to me that the salvation of this problem in the long run has to be voluntary programs—you are not going to have court orders, they are going to be fighting court orders for as long as we know.

We have to set up machinery that will encourage people to look at this problem and realize it has to be dealt with.

What happens—and I would like any one of you to reply, or all of you—what happens to school districts that want to come into this program after the money has been exhausted? Where do you get money? And how do they come into this program? And who in HEW is going to be big enough and smart enough to say "Last year we had 80 school districts. This year we have 240. The Congress will not appropriate more money ergo we have to divide the money from the 80 districts among the 240."

You will have more Senators and more Congressmen put in the heat because you see everybody around here says, "I want economy but not at my expense. Take it from the other guy."

We know that in vocational education and we know it in title I and in higher education, so I want you ladies and gentlemen to tell this committee what happens in 1974 or 1975 as new school districts come into this thing and have needs to do the very things that you are talking about here and the chosen few are already frozen in.

Who is going to provide the money for the new school districts and where does the machinery in this bill do it?

Mrs. **Edelman**. I would hope that all of these school systems who may not be cranked in under this initial appropriation will provide a new base of political pressure to come before this Congress to ask for money because they are now willing to meet the performance criteria.

The alternative is to give to——

Mr. **Pucinski**. Would you yield on that point?

Mrs. **Edelman**. Yes, sir.

Mr. **Pucinski**. I worked through this Congress on the amendment to impact to provide children public housing.

We in Chicago have 180,000 children living in public housing units attending public schools and the Chicago Housing Authority pays us $11.35 in lieu of taxes when it costs us $540 to educate each child.

Congress approved it and it worked its way through and it is now part of the law, but try and get a penny out of the Appropriations Committee for funding title C.

So it is all right for you to say that we ought to come over here and we ought to have political pressures to ask for more money but, Mrs. Edelman, in 13 years I have become a realist. It just won't be done.

Mrs. **Edelman**. The alternative to what you are saying—and I would hope we could show and in fact I think it would be a worthwhile experiment—if we could show after 2 years there are certain school districts which could establish one or more quality integrated schools, that would be preferable to having every school district in the country as a matter of entitlement have $10 which would not have any impact on real desegregation.

So I think we have to take the risk and hopefully up the performance ante, to have those school districts which will meet these performance criteria and hope they will come back with a success story to help sell Congress on the need for more money.

This is preferable to continuing to throw out money to districts as a matter of right, which I don't think will accomplish our goal of achieving integration.

Mrs. **Martin**. I endorse what Marian says. There are many school districts in this country which will be able to pick this program up with their own money if the Federal Government starts them off and if the Federal Government, in a sense, forces them to begin to think about how they are using their own resources. There are plenty of school people who will tell you that.

Mr. **Pucinski**. I would pray that you are right but after all the years of watching these programs, believe me that is so far out of the realm of probability because every one of these school districts in America is broke.

Mrs. Martin. I am not talking about new money. I am not talking about passing bond issues. I am talking about redirecting the State and local resources that routinely come into their school system.

I think title I is an example. California is a State which has redirected some of its own money along the same lines as title I because the Government started the program and started them thinking about it. They have not gone out and passed new bond issues, but they are investing some of their own resources to deal with a critical problem. I am not convinced we need $1.5 billion—I think we need to have money to make people start thinking so local citizens do not feel they have to be taxed individually to deal with an uncomfortable problem.

They may be willing to think about the problem if the Government comes in and encourages them to think about using their own resources differently.

Mr. Pucinski. As you know, there was substantial debate last year along the lines that you just mentioned. There were those who argued effectively and very persuasively that full funding of title I would do everything that is incorporated in this bill and do it better.

I don't know how you feel, but there was substantial urging along that line.

Mrs. Martin. I am not convinced of that, either.

Mr. Mitchell. Mr. Chairman, I would hope we could approach this in the spirit that you displayed in the conversations we had in your office last year on a number of occasions. I think your whole attitude was: "We have the possibility of getting $1.5. billion. You have a lot of problems in the schools of this country. let's find a way to spend this money intelligently in ways where it would do the most good."

And I remember your detailed discussion about the tipping problem, how you hoped things would be done to prevent schools from being resegregated. All of this, to me, boils down to the question of whether you are going to have in office people administering these programs who will be intelligent, honest, and fair, and reasonable, insulated against pressures that would try to direct them to do the wrong thing.

In my opinion, just from watching the way these programs operated under all administrations in the years that I have been around here, I would say that there is no substitute for a strong administrator who is honest and who will resist pressures to make him violate the law or not live up to the spirit of the law.

So I would hope that we would try to get out of the Mondale proposal the things that commonsense will tell us are going to be effective, giving due recognition to the fact that his findings are based on inquiries that the Senate directed him to make in that committee.

Apply also the sense of dedication that you and Mr. Bell and Mr. Hawkins have shown and you certainly showed enormously last year in getting legislation through. I think we will come out with a bill that is going to be workable.

I do not believe that it is possible to devise a foolproof paragraph in any of these bills that will insure forever and against all contingencies that we will be safeguarded against misuse of the money provided by this statute.

That is why, I think, we try to come as close as we can to what seems to be ideal language, but Congress never gives up its duty to continue to review and to scrutinize these programs to see that they work the way we intended them to work.

Unfortunately, much of the reason things have gone badly in the past is that the opponents of school desegregation have always been on the job. They are always trying to stop the program from working effectively. It seems to me that those in Congress who want to make these programs work have to be as diligent after the law passes as our opponents have been, in seeing to it that it does work.

Mr. PUCINSKI. My final question.

Mrs. Edelman said, in response to Congressman Bell, that if we are interested in a practical bill, she would rather have no bill at all than to try to legislate in that manner. I hope I am paraphrasing correctly—correct me if I am not, because I thought you did say that—and Mr. Bell said, "We are realists; we know what we have to get through here, and that is the best we can do."

And you said, "If that is the best we can do, perhaps we should have nothing."

That is why I want to know now, that if in the judgment of this committee the best that we can go to the floor with is the Bell-Hawkins bill, the administration bill, if that is the best that in the judgment of this committee—and there are 31 members on the committee and they are people who are very sympathetic to the whole cause of providing help in this area; you have a lot of friends on this committee, people who honestly want to do something—if in their judgment, the best we can do is report out the administration bill, do you believe and would you care to state at this time that you could support us on that on the floor, or would we have to go to the floor without your support?

Mrs. EDELMAN. Mr. Chairman, just to set the record straight, I was trying to suggest to the Congressman that there is a distinction between his role and mine: he is the politician and legislator, I am not; my job is to ask for the best bill I think we need.

Mr. PUCINSKI. And you have done that very eloquently.

Mrs. EDELMAN. I have to face that question when it arises. I am convinced this committee can come out with a better bill, and there should be every effort to do so. There should be continuing negotiation. And if we cannot do this, we have to look at the bill the subcommittee then reports, to see if we can give it our support.

I am not prepared to say at this time what we will do, but I hope we could support your bill.

Mr. PUCINSKI. I give you credit and congratulate you for being a good deal more flexible than some Members of the other body. At least you are willing to take a look at what this committee does, and at that time make a decision.

As you know, last year was a "take it or leave it" business. We were told that we were either going to take the Senate bill or there would be no bill; and we said we did not believe that would work. But even at that, even if we did agree to take their bill, they could not get their bill through the Senate. And I doubt very much now whether they can get their bill through the Senate.

Mrs. EDELMAN. The Senate has a different interpretation. They accused the administration.

Mrs. MARTIN. I am not prepared to answer, but I would like to comment, as a private citizen, having talked to a substantial number of black parents in the South during the last 2 years. Their position is that they are a little tired of all of these grant programs.

Their feeling, I believe, is: I am not sure that as black people we are ready to accept anything being offered to us to help us if, in fact, it turns out the way so many other programs turn out. The argument that "half a loaf is better than no loaf" frequently is that you do not get any of the half.

I have not made up my mind yet. If a bill comes out, an emergency school assistance program much like the administration bill, I don't think there is an "emergency," and if it goes the way of the title I, I am not certain how I will come out.

Mr. Mitchell. Mr. Chairman, I think that we said in our testimony the things we would like to see in a bill. Most of those are things you and Congressman Bell and Congressman Hawkins have jointly agreed are things that you would like to see in the legislation. I would assume if we can follow the suggestions that have been made here, no matter whose name is on it we would want to see the bill passed.

There is, of course, the one thing that for us would be the fatal addition, and that is the prosegregation types of amendments, those which would freeze the minority children in racial isolation with tricky little words, and those which would lay down a smokescreen about busing for the purpose of trying to spread confusion or anything which would have the effect of denying people an opportunity to teach or be a part of the school system on a nondiscriminatory basis.

But it is hard for me to believe that with the dedication that you have and the dedication of Congressmen Bell and Hawkins, it is hard for me to believe that we cannot come out with a program and a bill that is not going to be objectionable.

Therefore, as of now, I would like to say that for whatever it is worth, I am offering support for the objective of reporting out a bill that follows the broad outlines that all of us are hopeful of getting.

I have already talked with the Secretary of Health, Education, and Welfare, expressing hope that he, too, would maintain a posture that would enable him to have a kind of "give and take" with the Members of Congress.

I have also talked with Senator Mondale along that line, and I really believe if we all keep our tempers down and our logic high, we will be able to come out with a good bill.

Mr. Pucinski. Congressman Ford and Congressman Meeds have suggested that we might want to go down into some of these communities and see how the present program is working out, and that will be done.

But is there any prospect that your organization, a task force, will be revisiting some of these communities 6 months later, after they have had time to work with the bill, Mrs. Martin, or are you out of funds, or what is the situation here? Do you plan to go back? I presume you have not.

Mrs. Martin. I personally revisited the districts I visited earlier.

Mr. Pucinski. You revisited them?

Mrs. Martin. Yes, sir.

Mr. Pucinski. What have you found?

Mrs. Martin. That the situation was worse, if anything.

Mr. Pucinski. Even after they have been operating with the funds?

Mrs. Martin. Yes; two of the districts had opted not to take any ESAP money because of regulations that would bother them.

They decided not to participate in the program. In the other districts, the situation in terms of what was happening to students and what was happening to teachers and principals, et cetera, was worse.

Mr. PUCINSKI. What could have been done to improve that situation, in your judgment?

Mrs. MARTIN. I think, No. 1, if the districts had formed advisory committees, as required by the regulations, biracial community advisory committees, I think some of the problems could have been avoided. But these communities, as late as last week, had not yet formulated their biracial advisory committees.

I have advised HEW of my revisits.

Mr. PUCINSKI. We wrote into title I, and I believe it cranks in this year, the title I provision that a school superintendent has to certify that the parents of the school have participated in the formulation of policy and program and have had an opportunity to participate in the development of the curriculum in that school.

If my memory serves me right, that is strong language, and I think a lot of people around here are placing a great deal of hope in that proviso.

Mrs. MARTIN. Some of these districts did not have title I advisory committees.

Mr. PUCINSKI. Do you believe perhaps—assuming that the title I approach is workable, and there was some strong argument in its support—do you think this legislation ought to provide a similar provision that they have to certify that parents of children in that school have been permitted to participate in the development of policies in that school, before the distribution of this money?

Mrs. MARTIN. Absolutely, and I understand that is a provision in the Mondale bill.

Mr. PUCINSKI. We may want to bring that into the bill before this committee.

In Chicago, it was not until 2 years ago they started publishing the telephone numbers of the schools. If a parent wanted to call the school and let them know that a child was sick or ask a question, it was like going to Moscow to get the secrets on the ABM. There was no way to contact the school.

So it seems to me this is something we can try to work into this legislation.

I think you are absolutely right. I know the committee has demonstrated last year our desire to move forward with this legislation, and I am sure we will want to do it again this year. We know there is a problem. We believe, though, that approaching the problem on a long-range basis, where you give the States their pro rata share and give a lot of school districts a chance to get started on the program in various ways—I personally feel that that is a better way of doing it.

Obviously, we have a serious issue with the Mondale approach. The Mondale approach takes a different view. Congressman Hathaway, when he was a member of this committee last year, suggested pretty much the same approach, in that he felt that rather than disbursing the money too thinly, we should try to concentrate it.

But the problem I have with that is the question that I had raised earlier, that the school districts that are fortunate to be cranked into the formula now will be the chosen few. All the others are going to have to bite and scratch their way through to get into the program.

I believe this is a national program. I don't know of any community in America that is not confronted with this program, either by law or because an alert community wants to do something voluntary. And it would be my hope that we could set up the machinery where you would have a program going all over the country; and if, indeed, it needs more money, the time to come to get more money is when you have more communities participating in the program.

One thing that makes 815 and 874 completely and totally indestructible—it is the worst piece of legislation on the books of America today, I think everybody will agree.

Mr. Ford. Except for title II.

Mr. Pucinski. I am not going to accept that caveat, but I won't quarrel. Yet President after President has recommended major reforms, and every President was rebuked.

I have before this committee now a reform bill submitted by the administration, which I am cosponsoring for the administration. We have held extensive hearings. We had one witness who had courage enough to come before the committee and say, "Yes, you ought to rewrite the bill."

All the other witnesses testified at great length on why we don't dare touch it. And the one thing that makes 815 and 874 totally indestructible is that the Republic will collapse but 815 and 874 will still be there, because 360 congressional districts benefit from that legislation and I don't know of any Member of Congress who is willing to shoot Santa Claus.

So you see, if you would take a look at our reasoning and our logic, why we feel our approach is a sounder approach. It is a long-range measure. If indeed I was convinced that this is a 24-month bill, perhaps the Senate approach might be the wiser approach.

But when I look at this legislation for the next $x$ number of years, I think that, on sober reflection, on sensible reflection, you will find that the approach that we have worked out in this committee very carefully is one that offers the greatest degree of hope over the longest period of time to the largest number of communities in America.

I hope, just as I have listened to your testimony with great interest today, you will see it from our standpoint somewhere along the line.

You have been kind to give us this time, and we thank you very much.

Secretary Richardson will be before the committee at 9:30 tomorrow morning.

Mrs. Martin, I hope your time will permit you to come by. We may want to ask you a few questions along the line.

(Whereupon, at 1:15 p.m. the subcommittee recessed, to reconvene at 9:30 a.m., Tuesday, March 16, 1971.)

# EMERGENCY SCHOOL AID ACT

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TUESDAY, MARCH 16, 1971

House of Representatives,
General Subcommittee on Education
of the Committee on Education and Labor,
*Washington, D.C.*

The General Subcommittee on Education met at 9:30 a.m., pursuant to call, in room 2175, Rayburn House Office Building, Hon. Roman Pucinski (chairman of the subcommittee) presiding.

Present: Representatives Pucinski, Ford, Hawkins, Green, Badillo, Mazzoli, Quie, Bell, Ruth, Forsythe, Vesey, Kemp, and Peyser.

Staff members present: John F. Jennings, majority counsel; Alexandra J. Kisla, clerk; Thomas J. Gerber, assistant clerk; and Charles Radcliffe, minority counsel for education.

Mr. Pucinski. The committee will come to order.

We will resume our consideration of H.R. 2266 which is the administration's proposal for emergency school aid to schools undergoing problems of integration sponsored by our colleagues Congressman Bell and Congressman Hawkins, and H.R. 4847, which is the bill originating in the other body and introduced by Mr. Hawkins in the House dealing with the same subject in a considerably different manner.

We are most pleased to have with us this morning the distinguished U.S. Commissioner of Education, Dr. Sidney Marland. Dr. Marland is relatively new as U.S. Commissioner of Education but he has already made a substantial impact on the whole education spectrum of this country.

We are particularly grateful for the leadership that Dr. Marland is providing in trying to strengthen our whole concept of career education.

I have seen emerging all over the country a considerable dialog started by Dr. Marland in Dallas on the need for giving every youngster in this country an opportunity to develop a career and prepare himself for the world of work.

We are most pleased that with Dr. Marland we have today our good friend, Charles Saunders, the acting assistant secretary for legislation who has also been extremely helpful to this committee as we moved through the difficult field of writing educational legislation.

We are also pleased to have with us Mr. J. Stanley Pottinger. Director of the Office of Civil Rights for the Department of Health, Education, and Welfare. We had also scheduled originally the appearance of our distinguished Secretary of HEW, Dr. Richardson, but Secretary Richardson along with the rest of the Cabinet, is in New

York this morning attending the funeral of Mr. Young and so I understand that Dr. Marland will present Secretary Richardson's testimony.

Before I call on Dr. Marland for his statement I might point out that we started the hearings yesterday with testimony by Mr. Clarence Mitchell, the legislative director of the NAACP and Mrs. Ruby Martin and Mrs. Edelman both representing the Washington task force, that did a rather extensive study of the expenditures and the method in which the first $75 million were expended last year in the implementing of the President's emergency program.

I had pointed out yesterday that one of the problems that we have in that testimony was that the task force study was conducted during the period of September 14 to September 27 which was about 2 weeks after the first Federal money flowed to any school districts in relation to this legislation. I had expressed a hope that we might have something a little more current. Admittedly in the early hectic stages of this program there were probably a great many mistakes made.

We now have before the committee, and the committee will have copies of it if they do not already have copies, the report issued yesterday by the Comptroller General of the United States, a report prepared at the request of the Select Committee on Equal Educational Opportunity of the U.S. Senate.

The report is titled "Need To Improve Policies and Procedures for Approving Grants Under the Emergency Assistance Program." This is perhaps the most current analysis that we have of the program and I am particularly grateful for the title of this report because it is a hopeful title.

It says there is a need to improve policies and procedures for approving grants under the emergency school assistance program.

The report therefore does give us some basis for looking at our own legislation and looking at the guidelines and looking at the program and I think the report comes at a very propitious time because then it will give us all an opportunity to improve this legislation in a manner that will assure no repetition of whatever shortcomings may have been found in the program in the early stages.

I underscored yesterday one fact which sometimes gets lost when people criticize the program and that is that because of the problems that existed in many school districts in this country—and under a court order school districts that had to move forth—in trying to overcome some of the ancient and historical problems that had faced them over the years, these schools districts needed quick help and so the administration at that time put together with paper clips and scotch tape and rubber bands and whatever else would hold an authorization program from existing programs that had been authorized but not fully funded.

It was clearly apparent to everyone, I am sure to the Commissioner as well as to the members of this committee as well as the people in HEW as well as school administrators at the local level that there were many shortcomings in the program that was put together in this emergency manner last year. But so far as I know it was the only way that we could have moved to provide some assistance to these districts.

So I am grateful to those who have criticized the program. They have served a very useful purpose.

They have served a purpose in showing us the weaknesses of the program as administered under the formula put together in an emergency manner and they have given us some very strong pointers on how to write this legislation in a manner that these mistakes can be avoided.

It is my honest judgment having gone through a tough floor fight last year to get this legislation approved and having seen this legislation adopted by the House after all the turmoil and all the struggle and all the debate by a majority of better than 2 to 1, it is my judgment that the legislation before this committee supported by the administration does offer the greatest degree of hope to bring some meaningful help to these communities.

I want to make it clear I have an open mind as I am sure has every member of this committee. It is my hope when we get through this testimony of Dr. Marland today we will have an even better idea of how we can dovetail all the suggestions including the report of the GAO and come out of Congress with a meaningful bill to help the schools of this country.

There is no question in my mind that the schools are faced with a very serious crisis. This particular aspect of the problem is no less important than the financial aspects now being encountered by school districts all over the country.

Within that framework, Dr. Marland, I am delighted to have you here.

Mr. Hawkins. Mr. Chairman, I thought you would offer the report in the record at this point. If not, I move that the report referred to be inserted in the record at this point.

Mr. Pucinski. We also have included in the record the task force report that was submitted yesterday. Now do you want these two reports to appear in the record at the conclusion of all the testimony in the appendix?

Mr. Hawkins. I would think it should appear today. There is testimony relating to the report.

Mr. Bell. That will include both the task force report and these materials in today's testimony.

Mr. Pucinski. The gentleman from California has moved that we include the GAO report in the record. There being no objection then it will be so ordered.

(The documents referred to follow:)

In response to your request for comment, we have reviewed the GAO Report and believe that it confirms, in essence, the testimony presented by Commissioner Marland to the General Subcommittee on Education on March 16, 1971. He testified at that time that by emphasizing the speedy processing of project applications, the Department necessarily sacrificed a degree of program control, although we did not abdicate control.

The GAO Report's major recommendation is that adequate lead-time be provided program specialists to review project applications thoroughly, in the event additional Federal funding is authorized for emergency school desegregation assistance. This, of course, was the thrust of Commissioner Marland's testimony of March 16, in which he urged early enactment of the President's proposed Emergency School Aid Act of 1971 in order to provide local school officials and Federal program specialists with adequate time to plan, develop, and review worthwhile projects.

While the GAO Report pointed out a number of difficulties which we had already identified, we do not feel that the Department has administered the program improperly. Given the pressure of time and the nature of the undertaking, we feel that the Emergency School Assistance Program has exerted a substantial positive influence in strengthening the resolve of local leadership to make their desegregation plans more effective. Any balanced appraisal of the program should take account of the significant progress in school desegregation which was made last fall and the promise of further progress embodied in this Administration's commitment to help desegregating school districts in the future.

# NEED TO IMPROVE POLICIES AND PROCEDURES FOR APPROVING GRANTS UNDER THE EMERGENCY SCHOOL ASSISTANCE PROGRAM

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C.

The Honorable Walter F. Mondale
Chairman, Select Committee on
Equal Educational Opportunity
United States Senate

Dear Mr. Chairman:

This is our report on the need to improve policies and procedures for approving grants under the Emergency School Assistance Program administered by the Department of Health, Education, and Welfare. Our review was made pursuant to your request of November 24, 1970.

Sincerely yours,

Elmer B. Staats
Comptroller General
of the United States

## DIGEST

### *WHY THE REVIEW WAS MADE*

At the request of the Chairman, Senate Select Committee on Equal Educational Opportunity, the General Accounting Office (GAO) reviewed the policies and procedures of the Department of Health, Education, and Welfare (HEW) for approving grants of Federal funds to school districts to defray the costs of meeting special problems arising from school desegregation.

To meet the emergency needs of school districts that were desegregating, the President, on May 25, 1970, requested that the Congress appropriate, under six existing legislative authorities, $150 million to be made available immediately to these school districts. On August 18, 1970, the Congress appropriated one half of this amount and thereby established the Emergency School Assistance Program.

In accordance with the Committee's request, GAO selected grants made to 50 school districts for its review of approval procedures. The 50 grants, which were made by five of the HEW regional offices, totaled about $14 million, or about 25 percent of the approximately $55 million in grants made to 793 school districts as of November 13, 1970.

This review was conducted at HEW headquarters, Washington, D.C., and at five HEW regional offices. No work was done at the grantee school districts. Consequently, this report does not contain comments on the procedures and expenditures of the school districts relating to these grants. As a follow on to this review, GAO plans to make reviews at the school districts to examine into the expenditures of the grant funds.

The Office of Education and HEW have not been given an opportunity to formally examine and comment on this report, although most of the matters were discussed with agency officials.

### *FINDINGS AND CONCLUSIONS*

#### *Procedural Weaknesses*

GAO believes that, in many cases, school districts did not submit with their applications, nor did HEW regional offices obtain, sufficient information to enable a proper determination that the grants were made in accordance with program regulations or that the grants were in line with the purpose of the program.

Most of the applications did not contain comprehensive statements of the problems faced in achieving and maintaining desegregated school systems, nor did they contain adequate descriptions of the proposed activities designed to comprehensively and effectively meet such problems. Particularly, there was a lack of documentation in the regional files as to how the proposed activities would meet the special needs of the children incident to the elimination of racial segregation and discrimination in the schools. (See pp. 26, 45, and 55.)

Therefore GAO believes that the applications in many cases did not provide HEW with an adequate means for determining that project approvals were based upon consideration of such required factors as the applicants' needs for assistance, the relative potential of the projects, or the extent to which the projects dealt with the problems faced by the school districts in desegregating their schools.

The files supporting most of the grants reviewed did not evidence full compliance by the school districts with the regulations concerning the formation of biracial and student advisory committees. Also most of the applications did not contain, contrary to the regulations, adequate descriptions of the methods, procedures, or objective criteria that could be used by an independent organization to evaluate the effectiveness of each project. (See pp. 38, 39, 47, 51, 58, 61, 67, and 69.)

Officials in HEW's Atlanta Regional Office which made 28 of the 50 grants reviewed, told GAO that they generally did not have detailed information beyond that in the project files concerning the program activities set forth in the applications. Some said that they did not have time, prior to grant approval, to seek additional information and had to rely on school district officials to identify the major problems which the districts faced in desegregating their schools and to propose programs to deal with those problems.

Officials in HEW's Dallas Regional Office, which made 12 of the grants agreed, in general, that many of the applications did not contain adequate statements of the problems or descriptions of the activities designed to meet these problems. Officials in both the Dallas and Philadelphia Regional Offices--the Philadelphia office made seven of the grants reviewed--told GAO that they had satisfied themselves with respect to the merits of the projects, prior to project approval, on the basis of their knowledge of the school districts' problems and of their contacts with school officials to obtain additional information as considered necessary. There was an almost complete lack of documentation in the files with respect to the additional information that was known to, or obtained by these regional officials on the basis of which they had determined that the projects merited approval.

In the Kansas City and San Francisco Regional Offices which approved a total of three applications, the applications seemed to have provided sufficient information to enable regional officials to determine that the proposed activities were in line with the purposes of the program.

### *Transfer of property in Louisiana*

GAO noted that Louisiana law requires that school districts furnish school books and school supplies to students in private schools and provides that transportation may be furnished to students attending parochial schools. HEW regional officials contacted 14 Louisiana school districts prior to grant approval and determined that the majority had transferred property or had provided transportation to private schools under the State law. For the two Louisiana districts included in GAO's review, HEW determined that neither district had transferred property or had provided transportation to private schools. HEW decided to certify that the Louisiana school districts were eligible for program funding if it had no indications of civil rights violations other than the transfers allowed by Louisiana law.

### *Questionable Situations*

GAO believes that HEW should have questioned, prior to grant approval, the following situations noted during GAO's review.

--One school district appeared to have been ineligible to participate in the program, because it had entered the terminal phase of its desegregation plan prior to the time period specified in the regulations for eligibility. After GAO brought the situation to the attention of HEW officials, payments under the grant were suspended, pending a final determination of eligibility. (See p. 20.)

--Information pertaining to another school district indicated that program funds may have been used, contrary to regulations, to supplant non-Federal funds available to the district prior to approval of its grant. (See p. 37.)

--Information in the regional files at the time that one district's application was reviewed showed that the ratio of minority to nonminority faculty in each school within the district was not substantially the same as the ratio for the entire school system, contrary to the regulations. (See p. 59.)

GAO noted another case where information that had become available after the grant was made indicated that program funds may have been used to supplant non-Federal funds otherwise available to the school district. (See p. 37.)

### *Reasons for Weaknesses*

GAO believes that the weaknesses in the HEW procedures and practices were due, to a large degree, to HEW's policy of emphasizing the emergency nature of the program and to its desire for expeditious funding, at the expense of a more thorough review and evaluation of school districts' applications, particularly as to the adequacy of described program activities in satisfying program requirements.

GAO believes that, to overcome the weaknesses in the HEW grant approval procedures, HEW should undertake a strong monitoring program to help ensure that the grant funds already made available to the school districts are being used solely for program purposes and not for educational assistance in general. GAO recognizes that postgrant reviews at certain grantee school districts are currently being made by HEW regional officials.

## *RECOMMENDATIONS OR SUGGESTIONS*

GAO believes that, in the event additional Federal funding is authorized for similar assistance to school districts to defray the costs of meeting special problems arising from the desegregation of elementary and secondary schools, HEW should strengthen its procedures for approval of grants to school districts. Such action should:

--Provide sufficient time for regional officials to make a thorough review and evaluation of each application received so that approval will be based on an understanding of the problems faced in achieving and maintaining a desegregated school system and on an adequate determination that the proposed activities are designed to meet such problems.

--Require that all information relied upon in approving school district applications, whether obtained orally or in writing, be made a matter of record so that the basis upon which grant approvals are made will be readily available to HEW program managers or to others authorized to review the conduct of the program.

--Provide for an effective monitoring system to help ensure that (1) grant funds made available to the school districts are being used for the purposes specified in their applications and (2) the school districts are complying with HEW regulations on nondiscrimination as well as with the other assurances given in their applications.

## ABBREVIATIONS

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|---|---|
| ESAP | Emergency School Assistance Program |
| GAO | General Accounting Office |
| HEW | Department of Health, Education, and Welfare |

## CHAPTER 1

## INTRODUCTION

In response to a request dated November 24, 1970 (see app. IV), from the Chairman, Senate Select Committee on Equal Educational Opportunity, we reviewed the policies and procedures of HEW for approving grants of Federal funds to school districts to defray the costs of meeting special problems arising from school desegregation. This program is known as the Emergency School Assistance Program (ESAP).

Our review included an examination of the documentation in the HEW files and discussions with HEW officials relating to selected grants reported by the Office of Education as having been made to school districts by the HEW regional offices through November 13, 1970. All but one of the reported grants were made by five of the HEW regional offices. We made reviews at these five regional offices but did not make reviews at the school districts. Consequently, this report does not contain comments on the procedures and expenditures of the school districts relating to these grants. As a follow on to this review, we plan to make reviews at the school districts to examine into the expenditures of the grant funds.

### ESTABLISHMENT OF PROGRAM

On March 24, 1970, the President of the United States issued a statement on school desegregation, saying that he would recommend an expenditure of $1.5 billion--$500 million in fiscal year 1971 and $1 billion in fiscal year 1972--to assist local school authorities in their efforts to desegregate. Proposed legislation to authorize these expenditures was included in the President's message to the Congress on May 21, 1970. This legislation was not enacted by the Ninety-first Congress.

In his May 21, 1970, message to the Congress, the President anticipated that final action on this legislation would not be completed in time to deal with the most pressing problems of school districts that were in the process of desegregating and those that had to desegregate by the fall of 1970. To meet the emergency needs of such school districts, the President, on May 25, 1970, requested that the Congress appropriate, under six existing legislative authorities, $150 million to be made available immediately to school districts undergoing desegregation. In response, the Congress, on August 18, 1970, appropriated one half of the amount requested by the President, or $75 million, and thereby established ESAP.

### DESCRIPTION OF PROGRAM

ESAP provides financial assistance in the form of grants to school districts to defray the costs of meeting special problems arising from the desegregation of elementary and secondary schools. Statutory authority to carry out ESAP is contained in the following separate acts.

1. The Education Professions Development Act, part D (20 U.S.C. 1119-1119a).

2. The Cooperative Research Act (20 U.S.C. 331-332b).
3. The Civil Rights Act of 1964, title IV (42 U.S.C. 2000c-2000c-9).
4. The Elementary and Secondary Education Act of 1965, section 807 (20 U.S.C. 887).
5. The Elementary and Secondary Education Amendments of 1967, section 402 (20 U.S.C. 1222).
6. The Economic Opportunity Act of 1964, title II (42 U.S.C. 2781-2837) (under authority delegated to the Secretary of Health, Education, and Welfare).

The regulations governing the administration of ESAP by HEW were published in the Federal Register on August 22, 1970. The Commissioner of Education, who was vested with responsibility for administering ESAP, delegated this responsibility to the Office of Education's Division of Equal Educational Opportunities. The Office of Education's representatives in each of the 10 HEW regional offices were given the responsibility for reviewing and approving grant applications received from the school districts.

Under ESAP, a school district is eligible for financial assistance if (1) it is desegregating its schools under a final State or Federal court order or under a voluntary plan approved by HEW as meeting the nondiscrimination requirements of title VI of the Civil Rights Act of 1964 and (2) it commenced the terminal phase of such plan or court order by the opening of the 1970-71 academic year or had commenced such terminal phase during the 1968-69 or 1969-70 academic year. The regulations define terminal phase as that phase of a desegregation plan at which the school district begins operating a unitary school system--one within which no person is effectively excluded from any school because of race or color.

Applications for assistance under ESAP are submitted to HEW's regional offices for evaluation and approval or disapproval. According to HEW officials, applications were to be reviewed by regional Office of Education personnel for adequacy of program content and adherence to the ESAP regulations. Also, personnel from HEW's Office for Civil Rights located in either the regional or Washington offices were to review the applications for compliance with civil rights matters. Review for compliance with the legal aspects of the regulations was to be performed by personnel from the HEW Office of General Counsel.

Funds under ESAP may be used for such purposes as hiring additional teachers and teacher aides, providing guidance and counseling and other direct services to school children, revising school curriculums, purchasing special equipment, undertaking minor remodeling, supporting community programs, and financing other costs considered necessary to effectively carry out a desegregation plan.

## ALLOTMENT OF FUNDS TO STATES

The ESAP regulations provide that the Commissioner of Education distribute ESAP funds among the States by allotting an amount to each State which bears the same ratio to the total amount of funds available as does the total number of minority group children, aged 5 to 17 inclusive, in the eligible school districts in that State to the total number of such minority group children in all eligible school districts in all States. The regulations require that a State in no event receive more than 12.5 percent of the total funds allotted. The regulations provide also that the number of minority group children, aged 5 to 17 inclusive, in the school districts be determined by the Commissioner on the basis of the most recent satisfactory data available to him.

In late August 1970 HEW identified 1,319 school districts that were considered to be potentially eligible for ESAP funds and used the number of minority group children in these districts as a basis for allotting the funds to the States. Most of the statistics on minority group children in the school districts were based on a 1969 Office for Civil Rights survey. For some school districts, however, a combination of information obtained by the Office of Education and the Department of Justice which pertained to 1968 was used because 1969 data was not available.

Office of Education records showed that 25 States and one Territory had been allotted funds under the program. The records further showed that the allotment for Texas, if computed on the basis of the prescribed formula, would have been greater than the 12.5-percent limitation because of the large number of minority group children in the potentially eligible school districts in that State. Therefore the allotment for Texas was set at 12.5 percent of the total funds available for grants to school districts within the States, the maximum amount allowable under the regulations.

HEW records showed also that the Office of Education had not applied the prescribed formula to determine the allotment for the Virgin Islands but had reserved a $50,0[illegible] allotment for the territory. This amount was determined to be reasonable by the Office of Education on the basis of the prescribed percentages or stated maximums for territories contained in other Office of Education program legislation.

The amounts allotted for school districts within the 24 States, exclusive of Texas and the Virgin Islands, averaged about $18.65 for each minority child in their potentially eligible school districts. The average amount allotted to Texas was about $17.70 for each minority child; and for the Virgin Islands, the average amount for each minority child was $3.93.

The ESAP regulations also state that the part of any State's allotment which is determined by the Commissioner as not needed may be reallotted so that each State receives the same proportion as that it received of the original allotments and that appropriate adjustments may be made to ensure that no State receives a portion of the funds being reallotted in excess of its needs. Although no reallotment of ESAP funds had been made at the time of our review, public notice was printed in the Federal Register on January 27, 1971, that a reallotment would be made as of March 1, 1971.

## PROGRAM STATISTICS

Office of Education statistics show that 18,224 school districts in the United States were operating public schools in the fall of 1969. Of these school districts, 8,611--located in 26 States and the District of Columbia--were under the jurisdiction of the five HEW regional offices whose procedures under ESAP were subject to our review. Of the 8,611 school districts, 1,271 were identified by HEW as potentially eligible for assistance under ESAP as of August 26, 1970, pending final review and determination by HEW. Of these school districts, 792 were reported by the Office of Education as having received financial grants through November 13, 1970. Detailed statistics relating to program participation in the HEW regions included in our review are shown in appendix I.

Of the $75 million appropriated for ESAP, $3.6 million was reserved for the costs of Federal administration and evaluation of the program. Of the remaining $71.4 million, 10 percent ($7.14 million) was reserved for making grants to private nonprofit agencies and public agencies other than school districts, as required by the regulations, and $64.26 million was reserved for making grants to school districts.

The first grant under ESAP--made to the Jackson, Mississippi, school district in the amount of $1.3 million--was approved by the Acting Commissioner of Education on August 27, 1970. By November 13, 1970, 793 grants totaling over $55 million were reported by the Office of Education as having been made. The following table, prepared from HEW reports, shows a breakdown by each regional office of the number and amount of these grants. A further breakdown by State of the number and amount of these grants is shown in appendix II.

| | HEW region | Number of grants made | Percent of total grants | Amount of grants | Percent of total amount of grants |
|---|---|---|---|---|---|
| Region | I--Boston | - | - | $ - | - |
| " | II--New York | 1 | 0.1 | 45,000 | 0.1 |
| " | III--Philadelphia | 59 | 7.5 | 4,696,253 | 8.5 |
| " | IV--Atlanta | 530 | 66.8 | 36,194,038 | 65.2 |
| " | V--Chicago | - | - | - | - |
| " | VI--Dallas-Fort Worth | 200 | 25.2 | 14,324,921 | 25.8 |
| " | VII--Kansas City | 1 | 0.1 | 57,385 | 0.1 |
| " | VIII--Denver | - | - | - | - |
| " | IX--San Francisco | 2 | 0.3 | 189,938 | 0.3 |
| " | X--Seattle | - | - | - | - |
| Total | | 793 | 100.0 | $55,507,535 | 100.0 |

Most of the Federal funds provided have been for the purpose of carrying out special curriculum revisions and teacher-training programs. These two activities account for nearly 50 percent of the funds granted. The table below shows a breakdown by program activity of the funds granted as of November 13, 1970, as reported by HEW.

| Program activity | Amount granted | Percent of total |
|---|---|---|
| Teacher preparation programs | $13,340,250 | 24.0 |
| Special curriculum revisions | 12,603,730 | 22.7 |
| " pupil personnel services | 9,708,309 | 17.5 |
| " comprehensive planning | 8,360,524 | 15.1 |
| " community programs | 6,022,536 | 10.9 |
| " student-to-student programs | 1,673,226 | 3.0 |
| Other | 3,798,960 | 6.8 |
| Total | $55,507,535 | 100.0 |

## BASIS FOR SELECTION OF GRANTS TO BE REVIEWED

In accordance with the Committee's request, we selected 50 grants for examination. As a basis for distribution of the 50 grants among the HEW regions and the States within these regions, we considered the ratio of (1) the number of grants in each HEW regional office to the total number of grants in all regions and (2) the number of grants in each State within a region to the total number of grants in all the States within that region.

Our selection then was made from an HEW report showing the grants to school districts as of November 13, 1970, after having applied the following criteria.

--All grants of $1 million or more would be selected.

--At least two grants in each State would be selected. (If the State had received only one or two grants, we would select all grants.)

--All other grants would be selected at random. (Within each State the grants were listed from high to low dollar amounts so that we would select a mix of both.)

The 50 grants selected totaled about $14 million, or about 25 percent of the approximately $55 million that had been reported as granted to 793 school districts as of November 13, 1970. The following table shows, by HEW regional office, the total number and amount of grants made and those selected for our review. A further breakdown by State and school district of the 50 grants selected for review is shown in appendix III.

| | Total grants reported as of November 13, 1970 | | Grants selected for our review | |
|---|---|---|---|---|
| HEW region | Number | Amount | Number | Amount |
| Region I--Boston | - | $ - | - | $ - |
| " II--New York | 1[a] | 45,000 | - | - |
| " III--Philadelphia | 59 | 4,696,253 | 7 | 1,103,821 |
| " IV--Atlanta | 530 | 36,194,038 | 28 | 7,323,346 |
| " V--Chicago | - | - | - | - |
| " VI--Dallas-Fort Worth | 200 | 14,324,921 | 12 | 5,384,645 |
| " VII--Kansas City | 1 | 57,385 | 1 | 57,385 |
| " VIII--Denver | - | - | - | - |
| " IX--San Francisco | 2 | 189,938 | 2 | 189,938 |
| " X--Seattle | - | - | - | - |
| Total | 793 | $55,507,535 | 50 | $14,059,135 |

[a] This grant made to the Virgin Islands was excluded in making our selection.

## CHAPTER 2

## MAJOR PROGRAM REQUIREMENTS

### PRIORITIES IN APPROVAL OF APPLICATIONS

The ESAP regulations provide that financial assistance be made available to eligible school districts only to meet special needs resulting from the elimination of racial segregation and discrimination among students and faculty in elementary and secondary schools by contributing to the costs of new or expanded activities designed to achieve successful desegregation and to eliminate discrimination. The regulations require that the Commissioner of Education, in determining whether to provide assistance under ESAP or in fixing the amount thereof, consider such criteria as he deems pertinent, including

- --the applicant's relative need for assistance.
- --the relative promise of the project in carrying out the purpose of ESAP,
- --the extent to which the proposed project deals comprehensively and effectively with problems faced by the school district in achieving and maintaining a desegregated school system, and
- --the amount available for assistance under ESAP in relation to the applications pending.

The regulations provide that the Commissioner of Education not approve an application for assistance under ESAP without first affording the appropriate State educational agency a reasonable opportunity to review the application and to make recommendations on it.

### AUTHORIZED ACTIVITIES UNDER PROGRAM

The regulations require that projects assisted under ESAP be designed to contribute to achieving and maintaining desegregated school systems and emphasize the carrying out of such activities as

- --special community programs designed to assist school systems in implementing desegregation plans,
- --special pupil personnel services designed to assist in maintaining quality education during the desegregation process,
- --special curriculum revision programs and special teacher preparation programs required to meet the needs of a desegregated student body,
- --special student-to-student programs designed to assist students in opening up channels of communication concerning problems resulting from desegregation, and

--special comprehensive planning and logistic support designed to assist in implementing a desegregation plan.

## PROJECT APPLICATION REQUIREMENTS

The regulations require that a school district's application for ESAP funds set forth a comprehensive statement of the problems faced by the district in achieving and maintaining a desegregated school system, including a comprehensive assessment of the needs of the children in the system, and describe one or more activities that are designed to comprehensively and effectively meet such problems with the ESAP funds requested. The application also is to include a description of the methods, procedures, and objective criteria to be used by an independent organization to evaluate the effectiveness of each program activity for which funds are being requested.

In addition, the regulations include requirements that a school district give formal assurances, which are contained in the ESAP application form, that

--it will use the ESAP funds made available only to supplement, not to supplant, funds which were available to it from non-Federal sources for purposes which meet the requirements of the program;

--it will make a reasonable effort to utilize other Federal funds available to meet the needs of children;

--it has not engaged and will not engage in the transfer of property or services to any nonpublic school or school system which, at the time of such transfer, practices racial discrimination;

--it will not discriminate in the hiring, assigning, promoting, paying, demoting, or dismissing of teachers and other professional staff who work directly with children or who work on the administrative level on the basis of their being members of minority groups;

--it will ensure that the assignment of teachers and other staff who work directly with children will be made so that the ratio of minority to nonminority teachers and staff in each school is substantially the same as the ratio in the entire school system;

--it will not employ any discriminatory practices or procedures, including testing, in the assignment of children to classes or in carrying out other school activities; and

--it will have published in a local newspaper of general circulation the terms and provisions of the approved project within 30 days of such approval.

## COMMUNITY AND STUDENT PARTICIPATION IN PROGRAM

The regulations provide for the interests of the community to be considered by the school districts in the formulation and administration of their ESAP projects by requiring that biracial and student advisory committees participate in ESAP.

Each school district receiving an ESAP grant is required to establish a biracial advisory committee if no biracial committee has been formed by the district pursuant to a Federal or State court desegregation order. If a biracial committee has been formed under a court order, the committee is to be given a period of 5 days to review and comment to the school district on its ESAP application before the application is submitted to the Office of Education for approval.

If no biracial committee has been formed pursuant to a court order, the school district is to select at least five but not more than 15 organizations which, in the aggregate, are broadly representative of the minority and nonminority communities to be served. The names of the organizations selected are to be submitted with the district's application. Each organization selected may appoint one member to an advisory committee, and the school district is then to appoint such additional members from the community as may be needed to establish a committee composed of equal numbers of minority and nonminority members, at least one half of whom are to be parents whose children will be directly affected by the district's ESAP project. The biracial advisory committee is to be established within 30 days of approval of the district's application.

The school district is to make public the names of members appointed to the biracial advisory committee. It also is to consult with the committee with respect to policy matters arising in the administration and operation of the ESAP project and to give the committee a reasonable opportunity to observe and comment on all project-related activities.

In addition to submitting other assurances required by the regulations, a school district must submit with its application an assurance that, promptly following the opening of the 1970-71 school year, a student advisory committee will be formed in each secondary school affected by the project which has a student body composed of minority and nonminority group children. The number of minority and nonminority students serving on each such committee is to be equal, and the members are to be selected by the student body. The school district is to consult with the student advisory committee with respect to carrying out the project and establishing standards, regulations, and requirements regarding student activities and affairs.

## CHAPTER 3

## CONCLUSIONS ON REVIEW OF HEW POLICIES AND PROCEDURES FOR APPROVING GRANTS UNDER ESAP

We believe that, in many cases, school districts did not submit with their applications, nor did HEW regional offices obtain by other means, sufficient information to enable a proper determination that the grants were made in accordance with the ESAP regulations or that the grants were in line with the purpose of the program.

Most of the applications did not contain, as required by the regulations, comprehensive statements of the problems faced in achieving and maintaining desegregated school systems, nor did they contain adequate descriptions of the proposed activities designed to comprehensively and effectively meet such problems. Particularly, there was a lack of documentation as to how the proposed activities would meet the special needs of the children incident to the elimination of racial segregation and discrimination in the schools.

Therefore we believe that the applications in many cases did not provide HEW with an adequate means for determining that project approvals were based upon consideration of such factors as the applicants' needs for assistance, the relative potential of the projects, or the extent to which the projects dealt with the problems faced by the school districts in desegregating their schools.

The files supporting most of the grants reviewed did not evidence full compliance by the school districts with the regulations concerning the formation of biracial and student advisory committees. Also, most of the applications did not contain, contrary to the regulations, adequate descriptions of the methods, procedures, or objective criteria that could be used by an independent organization to evaluate the effectiveness of each project.

Officials in HEW's Atlanta Regional Office, which made 28 of the 50 grants that we reviewed, told us that they generally did not have detailed information beyond that in the project files concerning the program activities set forth in the applications. Some said that they did not have time, prior to grant approval, to seek additional information. They said that they had to rely on school district officials to identify the major problems which the districts faced in desegregating their schools and to propose programs which the officials believed would effectively deal with those problems.

Officials in HEW's Dallas Regional Office, which made 12 of the grants reviewed, agreed, in general, that many of the applications did not contain adequate statements of the problems or descriptions of the activities designed to meet these problems. Officials in both the Dallas and Philadelphia Regional Offices--the Philadelphia office made seven of the grants reviewed--told us that they had satisfied themselves with respect to the merits of the projects, prior to project approval, on the basis of their knowledge of the school districts' problems and of their contacts with school officials to obtain additional information as considered necessary. There was an almost complete lack of documentation in the files with respect to the additional information that was known to or obtained by, these regional officials on the basis of which they had determined that the projects merited approval.

In the Kansas City and San Francisco Regional Offices which approved a total of three applications, the applications seemed to have provided sufficient information to enable regional officials to determine that the proposed activities were in line with the purposes of ESAP.

We believe that HEW should have questioned, prior to grant approval, the following situations noted during our review.

--One school district appeared to have been ineligible to participate in ESAP because it had entered the terminal phase of its desegregation plan prior to the time period specified in the regulations for eligibility. After we brought the situation to the attention of HEW officials, payments under the grant were suspended, pending a final determination of eligibility. (See p. 20.)

--Information pertaining to another school district indicated that ESAP funds may have been used, contrary to regulations, to supplant non-Federal funds available to the district prior to its grant. (See p. 37.)

--Information in the regional files at the time that one district's application was reviewed showed that the ratio of minority to nonminority faculty in each school within the district was not substantially the same as the ratio for the entire school system, contrary to the regulations. (See p. 59.)

We noted another case in which information that had become available after the grant was made indicated that ESAP funds may have been used to supplant non-Federal funds otherwise available to the school district. For this case, as well as for the other noted above, we plan to examine into whether ESAP funds were used to supplant non-Federal funds. (See p. 37.)

In our opinion, the weaknesses that we observed in the HEW procedures and practices were due, to a large degree, to HEW's policy of emphasizing the emergency nature of ESAP and to its desire for expeditious funding, at the expense of a more thorough review and evaluation of the school districts' applications, particularly as to the adequacy of described program activities in satisfying ESAP requirements.

We believe that, to overcome the weaknesses in the HEW grant approval procedures, HEW should undertake a strong monitoring program to help ensure that the grant funds already made available to the school districts are being used solely for ESAP purposes and not for educational assistance in general. We recognize that postgrant reviews at certain grantee school districts are being made by HEW regional officials.

## NEED TO STRENGTHEN GRANT APPROVAL PROCEDURES

We believe that, in the event additional Federal funding is authorized for similar assistance to school districts to defray the costs of meeting special problems arising from the desegregation of elementary and secondary schools, HEW should strengthen its procedures for approval of grants to school districts. Such action should:

--Provide sufficient time for regional officials to make a thorough review and evaluation of each application received so that approval will be based on an understanding of the problems faced in achieving and maintaining a desegregated school system and on an adequate determination that the proposed activities are designed to meet such problems.

--Require that all information relied upon in approving school district applications, whether obtained orally or in writing, be made a matter of record so that the basis upon which grant approvals are made will be readily available to HEW program managers or to others authorized to review the conduct of the program.

--Provide for an effective monitoring system to help ensure that (1) grant funds made available to the school districts are being used for the purposes specified in their applications and (2) the school districts are complying with HEW regulations on nondiscrimination as well as with the other assurances given in their applications.

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The results of our work at the five HEW regional offices, which served as the basis for our overall conclusions, are discussed in the following chapters.

## CHAPTER 4

## COMMENTS ON HEW ATLANTA REGIONAL OFFICE PROCEDURES FOR APPROVING GRANTS UNDER ESAP

HEW Region IV, with headquarters in Atlanta, Georgia, encompasses the eight States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee. According to Office of Education statistics, 1,110 school districts were operating public schools in these States in the fall of 1969. As of August 26, 1970, 773 school districts were identified by HEW as being potentially eligible for assistance under ESAP. Of these 773 school districts, 530 had received grants totaling over $36 million as of November 13, 1970. Our review included 28 of these grants totaling about $7.3 million. (See app. III.)

We believe that the HEW Atlanta Regional Office did not require the school districts to comply with several pertinent requirements of the ESAP regulations. The applications for grants generally did not contain sufficient information to enable HEW to properly determine whether project approvals by HEW Region IV had been based upon consideration, as required by the regulations, of such factors as the applicants' needs for assistance, the relative promise of the projects, and the actual problems faced by the school districts in desegregating their schools. Program officers who reviewed the applications told us that they generally did not have detailed information concerning the subject matter of the applications and did not have time to seek additional information. They said that they had to rely on school district officials to identify the major problems which the districts faced in desegregating their schools and to propose programs which they believed would effectively deal with those problems.

A major factor in the approval of most of the applications which we reviewed appeared to have been a priority ranking of school districts that had been prepared by the HEW headquarters office. (See p. 23.) The priority ranking was used in the HEW regional office to establish the funding level for each school district. We were told by regional officials that these funding levels were intended for use only as control devices to preclude premature depletion of the funds allotted to each State and that the amounts of grants were based upon analyses of the needs documented by the districts. As previously pointed out, however, we noted a general lack of such documentation in the regional files.

Many of the applications reviewed did not describe the proposed program activities in such ways as to provide reasonably clear indications of the purposes for which grant funds would be spent, and the reviewing program officers did not always have what we considered adequate supplementary information in this regard. As a result, a proper determination could not be made, in our opinion, on the basis of the information available within HEW that these grants were for the purposes intended by ESAP--especially with regard to the use of program funds to meet special needs incident to desegregation of the schools.

Most of the applications, in our opinion, did not contain, contrary to the regulations, adequate descriptions of the methods, procedures, and objective criteria that could be used by an independent organization to evaluate the effectiveness of each program activity. Also the files supporting most of the 28 grants did not evidence full compliance by the districts with the regulations concerning the formation of biracial and student advisory committees and the publication of the terms and provisions of the ESAP projects.

Regional officials told us that they had accepted, in the absence of indications to the contrary, the assurances of the school districts that they were not (1) discriminating on the basis of race in teacher and professional staffing patterns, (2) assigning children to classes on the basis of their being members of minority groups, or (3) engaging in the transfer of property or services to any nonpublic school or school system which practiced racial discrimination.

## ELIGIBILITY AND FUNDING OF SCHOOL DISTRICTS

### Eligibility of school districts

In general, the procedures followed in Region IV for determining the eligibility of applicant school districts were satisfactory. For a few cases in which complaints had been received indicating possible noncompliance with title VI of the Civil Rights Act of 1964, we were informed by Office for Civil Rights officials in Washington that, pending final resolution of such complaints, the benefit of the doubt had been given to the applicant districts in all cases and funding had not been held up.

To allot ESAP funds to the eight States in Region IV, HEW/Washington determined that there were a total of 773 potentially eligible school districts in the region as of August 26, 1970. On the basis of the 2,130,717 minority students in these 773 potentially eligible school districts, the Office of Education, through the use of the formula previously described on page 7, allotted over $39 million to school districts in these States, as set forth below.

| State | Number of potentially eligible school districts | Number of minority students | State allotment |
|---|---|---|---|
| Alabama | 110 | 273,274 | $ 5,095,008 |
| Florida | 64 | 392,965 | 7,326,565 |
| Georgia | 168 | 366,648 | 6,835,902 |
| Kentucky | 7 | 15,021 | 280,057 |
| Mississippi | 149 | 274,412 | 5,116,225 |
| North Carolina | 125 | 371,247 | 6,921,648 |
| South Carolina | 92 | 262,584 | 4,895,700 |
| Tennessee | 58 | 174,566 | 3,254,665 |
| Total | 773 | 2,130,717 | $39,725,770 |

The regulations require that a school district, to be eligible for ESAP assistance, must have commenced the terminal phase of its voluntary or court-ordered desegregation plan during the 1968-69, 1969-70, or 1970-71 school year.

Regional officials told us that, at the beginning of ESAP, the Division of Equal Educational Opportunities in Washington had sent Region IV a listing of all potentially eligible school districts in the region and had requested that the list be checked with the regional Office for Civil Rights to determine whether any of the districts were considered to be ineligible to participate in ESAP. These officials said that no record had been kept in the region of the results of this work. An official of the Division of Equal Educational Opportunities in Washington told us that a revised listing of potentially eligible school districts subsequently had been sent to the regions that took into consideration the information provided by Region IV. This listing showed, for each eligible district, the total number of students, the number of minority students, and a numerical priority rating.

To initiate ESAP, a number of conferences were held in the various States between representatives of HEW, the State school offices, and the school districts. The HEW senior program officer said that the State school offices had selected the school districts whose representatives had attended these conferences.

Determinations of school district eligibility in Region IV were made either by officials of the regional Office for Civil Rights or by officials of the HEW Office of General Counsel who were detailed to the region. Regional officials told us that Region IV, Office for Civil Rights determinations had consisted of (1) verifying that a copy of the court order or voluntary plan accompanied the application, (2) checking against available Office for Civil Rights records to determine whether the applicant was considered to be in compliance with the nondiscrimination requirements of title VI of the Civil Rights Act of 1964 and had entered the terminal phase of its desegregation plan within the time limitations stated in the regulations, and (3) reviewing the assurances in the application to verify that they had been signed and that they had not been altered. Of the 28 school districts included in our review, 19 were operating under court-ordered desegregation plans and nine were operating under voluntary desegregation plans.

We reviewed the regional Office for Civil Rights files to determine whether there were any records of complaints against the school districts included in our review that would indicate that the districts were not in compliance with title VI of the Civil Rights Act of 1964.

We were told that the Office for Civil Rights was not responsible for investigating complaints against school districts which had desegregated pursuant to court orders and that any complaints received against such districts were forwarded to the Department of Justice for its consideration. We noted that the region had received complaints against two court-ordered districts included in our review after the date of the most recent court orders but before approval of the ESAP grants. These complaints had been forwarded to the Department of Justice. In addition, there were complaints against two other court-ordered districts, but neither the dates of receipt of the complaints nor the dates of their transmissions to the Department of Justice were shown in the regional files.

Regional officials told us that the Office for Civil Rights had responsibility for investigating complaints against districts which were desegregating under voluntary plans. Regional files contained a record of complaints against two of these districts included in our review--Dillon County School District No. 2, South Carolina, and Columbus County School District, North Carolina.

Indications of possible noncompliance by school districts with the eligibility requirements of ESAP are discussed below.

### Apparently ineligible district approved for ESAP grant

The regional files did not contain a copy of the desegregation plan for Jefferson County School District, Kentucky. Information in the file, however, indicated that Jefferson County had completely desegregated its schools in 1965 using geographic attendance zones and that the county had not made any subsequent changes in the district's plan. According to ESAP regulations, school districts which had entered the terminal phase of their desegregation plans prior to the 1968-69 school year were not eligible for ESAP grants.

In 1968 HEW had questioned the compliance status of the district, because the attendance zones drawn by the district produced one essentially all-black school. The district justified the existence of the all-black school to the satisfaction of HEW, and in February 1969 HEW wrote to the school district advising it that "the present plan [1965] of desegregation satisfies the provisions of Title VI of the Civil Rights Act of 1964."

After we brought this case to the attention of HEW officials, they agreed that the information available indicated that the district had entered the terminal phase of its desegregation plan before the 1968-69 school year and therefore apparently was not eligible to participate in ESAP. Payments on the grant were suspended pending a final determination of eligibility.

### Complaint against grantee school district on teacher discrimination upheld by Department of Justice

Regional Office for Civil Rights records pertaining to Talladega County, Alabama, contained notes indicating that, on October 13, 1970, Department of Justice advice was being obtained on "an NEA [National Education Association] teacher firing motion," and that, on November 4, 1970, the county superintendent of schools assured the region that there was no discrimination against teachers in the county. The ESAP grant to Talladega County was approved on November 5, 1970, in the amount of $168,247. As of January 17, 1971, $48,338 in grant funds had been advanced to the Talladega County School District.

Department of Justice officials told us that in September 1970 they had received two complaints (from sources other than HEW) concerning the firing of teachers in Talladega County. Subsequent investigation by the Department of Justice indicated that the complaints were justified, and on January 8, 1971, after the ESAP grant was approved, a court order was filed requiring reinstatement of the dismissed teachers. At the time of our review, the regional Office for Civil Rights had not made a postgrant review at the Talladega County School District to determine whether the district had complied with the court order.

### Inquiry concerning downgrading of black principals

On August 24, 1970, HEW received an unsigned inquiry from a student concerning the downgrading of black principals in Dillon School District No. 2, South Carolina. HEW/Washington forwarded the letter to the Region IV Office for Civil Rights on August 28, 1970. The letter was received in the region on September 2, 1970--1 day prior to approval of the district's ESAP application. There was no indication in the regional files that the letter had been considered during the review of the district's application or that regional officials had been aware of the letter at that time.

On September 24, 1970, regional Office for Civil Rights personnel made a postgrant visit to this school district. As a result of the visit, the regional Office for Civil Rights wrote to the superintendent of the Dillon school district on December 3, 1970, reminding him that the district had not submitted to HEW the job descriptions for the newly created positions of coprincipals in the school system. Also the letter stated that the black coprincipals appeared to be subordinate to the white coprincipals. Therefore the school district was requested to submit the job descriptions of the coprincipals so that a determination could be made as to whether the school district was in compliance with the Civil Rights Act of 1964.

### Indication of discrimination in assignment of students

We noted a complaint against Columbus County School District, North Carolina, involving the acceptance of students from a neighboring school district. An HEW Office of General Counsel official informed us that white students were leaving certain schools in the neighboring county, which was under a Federal court order to desegregate, and attending schools in Columbus County which was operating under a voluntary desegregation plan. On October 22, 1970, the regional Office for Civil Rights advised the superintendent of Columbus County schools that this practice was not acceptable because it was contrary to the nondiscrimination requirements of title VI of the Civil Rights Act of 1964. The superintendent was requested to furnish written assurance that the practice would be discontinued. On October 29, 1970, the superintendent advised Region IV that the students would be reassigned to their school district of residence.

## Funding of school districts

A major factor in determining the amount of ESAP grants made to school districts appeared to have been a priority ranking of eligible districts that was established by HEW/Washington and used by Region IV to establish funding levels for each district.

The Office of Education, Washington, established a system for determining the priority ranking of school districts eligible to receive ESAP funds. A letter dated August 24, 1970, from the Director for Education Planning, Office of Assistant Secretary for Planning and Evaluation, to the Acting Commissioner of Education pointed out that in July 1970 the Secretary of HEW had clearly stated that the purpose of ESAP was to fund quality desegregation projects in the school districts where the need was greatest and where the chances of cooperation were best. This letter also stated that two factors would determine the final decision on whether or not a district would receive funds:

--The quality of the comprehensive desegregation plan.

--The priority ranking of the district, determined by factors which combined an estimate of need and compliance probability.

The letter stated also that the Commissioner, meeting with the Advisory Committee on Desegregation, had decided on the following four factors as the determinants of each district's priority ranking.

1. Percent of minority enrollment.
2. Effective date for terminal desegregation.
3. Assessment by the Office for Civil Rights of the likelihood of cooperation and success in the eligible district based on record of past compliance.
4. Proportion of students within a district reassigned as a result of the desegregation plan.

Under the priority-ranking system that was established, points were given for each of the above factors--three points being the highest score and one point being the lowest score for each factor. Thus the highest priority districts would have scores of 12 and the lowest districts scores of four on the combined factors.

Using this priority ranking, regional office officials established a funding level for each school district by multiplying the number of minority students in the district by $28, $18, or $10, depending upon the numerical rating assigned. If the numerical rating was between 10 and 12, the school district's funding level was computed on the basis of $28 for each minority student; if the rating was between 7 and 9, $18 was used; and if the rating was between 4 and 6, $10 was used. HEW officials could not tell us the source of the $28, $18, and $10 figures or how these figures had been determined. The HEW regional senior program officer told us that the funding levels were intended to be used only as an internal control to ensure that no one district would materially deplete the funds allotted to a State.

The HEW senior program officer also said that the amounts granted to districts were determined by the program officers on the basis of their analyses of the needs documented by the districts. The files which we examined, however, did not, in our judgment, contain either adequately documented needs or evidence of the type of analyses made by program officers that would permit them to determine the applicants' needs for ESAP funds. Some program officers told us that the time available to them for reviewing applications had not permitted in-depth reviews, but others said that applications and proposed programs had been discussed with school district officials by telephone. In most cases, the program officers had not made records of these discussions and they could not recall specifics of the discussions. When records had been made, they generally related to changes necessary to bring proposed programs in line with the established funding levels.

The initial grants to 20 of the 28 school districts included in our review were within 5 percent of the established funding levels--within 2 percent in 16 cases. In 17 cases the grants were for lesser amounts than those requested in the applications, and in 11 of those cases the grants were within 1 percent of the established funding levels. We noted no funding pattern in relation to the funding levels in the other eight grants we reviewed.

A comparison of the established funding levels with the amounts requested by the school districts and the amounts initially granted by Region IV for the 28 districts included in our review follows.

| School district | Funding level established by HEW Region IV | Amount requested by school district | Amount of ESAP grant |
|---|---|---|---|
| Alabama: | | | |
| Phenix City | $ 74,312 | $ 215,588 | $ 74,312 |
| Sylacauga | 27,468 | 54,500 | 27,468 |
| Talladega County | 111,916 | 168,247 | 168,247 |
| Florida: | | | |
| Dade County | 1,922,256 | 2,966,606 | 1,921,905[a] |
| Madison County | 57,596 | 50,000 | 50,000 |
| Wakulla County | 9,414 | 308,314 | 9,000 |
| Georgia: | | | |
| Appling County | 17,946 | 18,313 | 18,313[b] |
| Atlanta | 1,266,228 | 1,150,989 | 1,150,989 |
| Bacon County | 6,048 | 6,000 | 6,000 |
| Carroll County | 30,654 | 16,000 | 28,800 |
| Crisp County | 68,292 | 65,925 | 65,925 |
| Montgomery County | 12,690 | 13,000 | 13,000 |
| Wilkenson County | 26,658 | 18,000 | 22,000 |
| Kentucky: | | | |
| Jefferson County | 32,710 | 62,480 | 32,700 |
| Fulton County | 4,430 | 46,595 | 4,430 |
| Mississippi: | | | |
| Harrison County | 43,830 | 80,217 | 43,000 |
| Hinds County | 196,672 | 190,000 | 190,000 |
| Houston | 14,976 | 200,000 | 20,000 |
| Jackson Municipal Separate | 330,858 | 1,300,000 | 1,300,000 |
| North Carolina: | | | |
| Columbus County | 118,944 | 143,258 | 118,900 |
| Hoke County | 89,264 | 90,240 | 89,240 |
| Tarboro | 44,212 | 60,732 | 43,832 |
| Winston-Salem City/ Forsyth County | 250,938 | 390,441 | 250,738 |
| South Carolina: | | | |
| Dillon County No. 2 | 71,000 | 100,000 | 75,000 |
| Greenville County | 232,434 | 696,076 | 232,188[c] |
| Orangeburg County No. 7 | 25,816 | 39,068 | 25,568 |
| Tennessee: | | | |
| Maury City | 1,484 | 16,500 | 1,500 |
| Memphis | 2,083,564 | 2,083,564 | 992,531 |

[a] Grant subsequently increased to $2,121,905

[b] Grant subsequently increased to $ 38,313

[c] Grant subsequently increased to $ 359,998

PROJECT POTENTIAL AND CONTENT

In our opinion, 25 of the 28 applications included in our review did not contain, contrary to the regulations, comprehensive statements of the problems faced in achieving and maintaining desegregated school systems or adequate descriptions of the proposed activities designed to effectively meet such problems. In addition, the applications did not adequately explain how the proposed activities would meet the special needs of the children incident to the elimination of racial segregation and discrimination in the schools. In only a few cases did the applications show the basis for the dollar amounts requested for the proposed activities. Therefore we believe that the applications, in general, did not provide HEW with an adequate means for determining that ESAP funding decisions had been based on a consideration of the applicants' needs for assistance, the relative potential of the projects, or the extent to which the projects dealt with the actual problems faced by the school districts in desegregating their schools.

We discussed the applications with the program officers who had reviewed them and recommended their approval, to determine whether any additional information concerning the subject matter of the applications was available to them that would support or justify their approval actions. In a few cases, the program officers said that they had been familiar with the situations in the districts or that their experience had provided them with bases for judging the appropriateness of the amounts requested. In most cases, however, the program officers said that they had no additional information concerning the subject matter of the applications but that they had to rely upon local school officials to identify the problems which they were facing in desegregating their schools and to propose programs which would effectively deal with those problems.

The HEW senior program officer told us that the Office of Education had instructed the regional offices, during the early stages of the program, to complete the review and either approve or disapprove the applications within 36 hours of their receipt. Of the 28 applications which we reviewed, 15 had not been approved within the specified time period, but there was ample indication that the processing and approval of applications had been handled on a crash basis.

Following are some examples of applications which, in our opinion, contained inadequate information as to (1) the existence of special needs incident to desegregation of the schools, (2) the nature and scope of proposed activities designed to meet such needs, (3) the relationship of the proposed activities to the special needs of the children, or (4) the basis for the amount of the grant.

Jackson Municipal Separate School District
Jackson, Mississippi

The Jackson Municipal Separate School District applied for and received an ESAP grant of $1.3 million. The budget outline supporting the grant showed that funds were requested for the following general program activities.

| | |
|---|---|
| Special community programs | $ 103,000 |
| Special curriculum revision programs | 676,400 |
| Teacher preparation programs | 449,900 |
| Other | 70,700 |
| Total | $1,300,000 |

The application did not contain a narrative statement justifying the $70,700 under the category "Other" but did contain narrative statements under two other categories--Special Student-to-Student Programs and Special Comprehensive Planning and Logistical Support--for which no funds were shown in the budget outline.

Although the general types of programs listed in the Jackson application, as indicated above, are proper for funding under ESAP, we believe that the application did not contain sufficient information to (1) show, in most areas, the existence of special needs incident to the elimination of racial segregation and discrimination among students and faculty, (2) permit a determination that the proposed program activities were related to the problems identified in the application, and (3) provide a basis for evaluating the reasonableness of the amount of the grant.

The "special curriculum revision programs" section of the Jackson application, shown below, is illustrative of the inadequacies in the application.

> "SPECIAL CURRICULUM REVISION PROGRAMS
>
> "NEW AND VARIED INSTRUCTIONAL TECHNIQUES AND MATERIALS TO SERVE CHILDREN FROM DIFFERENT ETHNIC AND CULTURAL BACKGROUNDS.
>
> "Problems - Providing each pupil with basic skills of communication and computation as a means of continued learning. (3R's) Assisting pupils with skills to compete effectively and acceptably in a free enterprise society is a specific problem.
>
> "Needs - Needs are the same as the problems.
>
> "NEW TECHNIQUES AND MATERIALS FOR IMPROVED EVALUATION OF STUDENT PROGRESS
>
> "Problems - Changing from a typical lecture, "say-and-do" type of instruction to many techniques that incorporate self-evaluation, discovery, peer-to-peer, etc., to redirect a reservoir of information and materials.
>
> "Needs - The needs for a change in direction to accomplish goals of current everyday living.

> "SPECIAL DEMONSTRATION PROJECTS TO INTRODUCE INNOVATIVE INSTRUCTIONAL METHODOLOGIES FOR IMPROVING QUALITY
>
> "Problems - To introduce newer techniques, materials, methods of accomplishment, more effective staff utilization in such techniques as team teaching, differentiated scheduling, aides, flexible scheduling modular scheduling, etc. beginning in selected schools as need is indicated and moving to all schools through plan development.
>
> "Needs - The needs are to redirect instruction to accomplish the above through varied staff approaches and pupil orientation."

The only part of the project description which dealt with the proposed program activity is quoted in its entirety below. The remainder of the description consisted of statements concerning school desegregation in general, fully one half of it quoting a statement by the President as recorded in the Congressional Record for March 24, 1970.

> "A program of education redevelopment is essential. It is proposed that the program include five major areas of redevelopment. The initial steps will be "action programs" accompanied by long-range planning. The five major areas of redevelopment are:
>
> "(1) Professional redevelopment of the school system staff to implement immediate innovations and initiate the planning for a continuous program of professional growth.
>
> "(2) Curriculum redevelopment to plan and implement a broader, more relevant, and more flexible curriculum that will meet the identified needs of all pupils.
>
> "(3) Internal management and support redevelopment of the school system operation necessary for effectively planning and carrying out a defined educational program.
>
> "(4) Redevelopment and utilization of community resources so that the improving instructional program can more effectively involve the total community and more efficiently accomplish defined performance objectives.
>
> "(5) Development of a system for continued development and accountability of the total educational system so that innovation can be evaluated and change made economically and efficiently."

The program officer told us that his work on the ESAP application was his first experience with the Jackson school district. He said that, most of his work on the application, aside from eliminating hardware items, had consisted of rearranging the district's earlier proposal so that it would be compatible with the ESAP application form. In response to our questions as to what the specific purposes of the project were and how those purposes were related to special needs incident to the elimination of racial segregation and discrimination among students and faculty, the program officer stated that the biggest problem facing the school district was keeping white children in the public schools, that the primary purpose of the project was to assist teachers in dealing with a wider range of achievement levels, that the school district needed any help it could get, and that any help the district received would be worthwhile. He could not supply more specific answers.

Concerning the approval of the grant made to the Jackson school district, we noted that the project file contained a copy of a telegram dated August 27, 1970, from the Acting Commissioner of Education to the Superintendent of the Jackson Public Schools advising him that the application for $1.3 million had been approved. The ESAP application, however, was not formally received in Region IV until August 31, 1970. On that day the application was reviewed and approved.

The project file also contained reference to a previous application for $3,764,240. In response to our questions concerning the previous application and the telegram from Washington approving the application for $1.3 million before it was received in the HEW regional office, the program officer for Mississippi related to us essentially the following information.

--Several months before ESAP was approved, Jackson school officials had prepared and taken to Washington an application for about $3.76 million in emergency school assistance funds. After funds for ESAP were approved at only one half of the amount requested by the President, Jackson school officials were informed that their application for $3.76 million could not be approved because of limitations on available funds, and the regional program officer was sent to Jackson to work with local officials to reduce their application to an amount more compatible with the amount of ESAP funds available for the State.

--By eliminating all proposed hardware purchases from the $3.76 million application, the program was reduced to about $700,000, and this information was telephoned to the Deputy Director, Division of Equal Educational Opportunities, Office of Education, Washington. On August 26, 1970, the deputy director telephoned the program officer and told him that Jackson was to be funded for $1.3 million and that an ESAP application should be prepared for that amount.

We also discussed this matter with the Director and the Deputy Director, Division of Equal Educational Opportunities, who provided us with the following additional information.

--After the program officer determined that elimination of hardware items would reduce the Jackson program to about $700,000, the Director and Deputy Director met with the then-Acting Commissioner of Education and it was decided that, since the objective of the Jackson program was to get the schools open without violence, Jackson should be funded for $1.3 million to relieve racial tension. The circumstances surrounding this decision, as related to us, were:

1. The district had received four desegregation court orders in 13 weeks.

2. Even though the schools were open, more than 8,000 students were boycotting classes.

3. More and more white students were going to private schools.

4. The superintendent of schools was resigning.

5. The biracial committee had decided to disband.

6. There had been incidents of violence at Jackson State University.

--The difference between the $1.3 million that was granted and the $700,000 that resulted from elimination of hardware items from the initial proposal (which they said was never formally submitted to HEW) was intended to cover the cost of expanding a computer-assisted instructional program to a number of schools which were being desegregated for the first time.

--Jackson was considered to be a pivotal district in the peaceful desegration of Mississippi schools, and, to ensure peaceful desegregation of the schools in Jackson, HEW considered it essential to demonstrate that quality education was to be made available in previously all-black schools.

Board of Education, Memphis City Schools,
Memphis, Tennessee

The Board of Education, Memphis City Schools, initially requested $2,083,564, which was the funding level established by Region IV for the Memphis district. The amount granted was $992,531. The general activities and related amounts covered by the initial request and the grant were as follows:

| Activity | Initial request | Amount granted |
|---|---|---|
| Special community programs | $ 283,466 | $189,161 |
| Special pupil personnel services | 703,279 | 310,822 |
| Special curriculum revision programs | 395,102 | 153,657 |
| Teacher preparation programs | 241,190 | 21,240 |
| Special student-to-student programs | 187,800 | 90,500 |
| Special comprehensive planning | 109,559 | 101,127 |
| Other | 163,168 | 126,024 |
| Total | $2,083,564 | $992,531 |

The HEW program officer for Tennessee told us that, at the workshop session prior to the filing of the application, an HEW official assisted the district in preparing an application which would approximate the amount of the established funding level for the district. The HEW program officer said that she later had been told that Memphis' project could not be funded for the amount requested, that she had assisted the district in revising the project description, but that she had not been concerned with the amount shown for each activity. She said that her only concern with the budget had been to keep the total amount within the revised ceiling and that the revised amounts requested by Memphis for the various activities had been established by the school district.

The initial application was received in Region IV on September 25, 1970. On September 28, 1970, it was reviewed by three program officers, each of whom recommended funding at $992,531. Final approval was delayed until November 12, 1970, principally because of a question concerning the district's compliance with title VI of the Civil Rights Act of 1964.

In our opinion, the project file lacked information showing how the grant funds were to be used to meet special needs incident to the elimination of racial segregation and discrimination among students and faculty. Illustrative of such inadequacies are the following excerpts from the application.

### Employment of secondary guidance counselors and secondary counselor aides

The district set forth the following problem in the area of providing guidance counselors in the secondary schools.

> "There is in our increasingly complex society, a great need for more individual counseling and guidance, especially as it relates to vocational exploration, long range educational planning and human relations. The pupil-counselor ratio in the Memphis City Schools is such that this individual attention is sometimes difficult."

To deal with this problem, the district's project provides for employing 11 additional counselors, 22 counselor-aides, and two "area specialists"--one to supervise the counselors and the other to oversee the activities of the counselor-aides--at a total cost of $182,264.

### Staffing and maintaining a mobile zoo

Under the program activity "Special Curriculum Revision Programs," the district set forth the following problem.

> "The City of Memphis has a $14,000 Mobile Zoo trailer, with both heating and air conditioning. This new trailer arrived in Memphis at the end of this summer so as to serve only two days in the summer park system programs. The only other vehicle of this type was purchased at the same time for New York City. The Memphis Mobile Zoo is available from the City of Memphis Park Commission with assistance from the Memphis Zoo for use in the Memphis City Schools. The problem is the staffing of the trailer, and maintaining it and a one ton truck to pull the trailer."

To deal with this problem, the district proposed to employ one area specialist, one aide, and one truck driver; to purchase one truck with trailer hitch; to renovate the main cage of the trailer; to acquire domestic and wild animals, and necessary equipment, materials, feed and supplies; and to operate and maintain the mobile zoo, at a total cost of $14,979.

### Using the newspaper as an instructional tool

Also under the program activity "Special Curriculum Revision Programs," the district stated the following problem.

> "Many disadvantaged children are 'turned off' by books and other school type materials. On the other hand, teenagers and pre-teens are interested in the world about them. From past experiences, teachers have discovered that students are very much interested in reading the daily newspaper. Newspapers used this year met with tremendous enthusiasm on the part of students."

To deal with this problem the district proposed to purchase "Newspaper Subscriptions @ $0.05 each" at a total cost of $25,000.

The program officer told us that her work on the ESAP application was her first exposure to the Memphis school system. She acknowledged that high student-to-counselor ratios had been experienced by most school systems and that this problem was not related to elimination of racial segregation and discrimination. She said, however, that the problem was more pronounced in desegregated schools--especially those with high proportions of minority students. The program officer said also that she did not know of any particular problem faced by Memphis that was not common to other desegregated districts having large numbers of minority students. She stated that the mobile zoo would permit black and white children to be exposed to animals and that the newspapers would help to alleviate problems in instructional programs.

In view of the kinds of problems described in the Memphis application, as shown above, and after considering the views of the program officer, we believe that HEW had insufficient information upon which to base a decision that the grant funds were to be used to meet special needs incident to desegregation of the district's schools.

Orangeburg County School District No. 7
Elloree, South Carolina

Orangeburg County School District No. 7 applied for ESAP funds in the amount of $39,068 and received a grant of $25,568.

The budget outlines submitted by the district in its application and revised by HEW were as follows:

| Activity | Submitted | Revised |
|---|---|---|
| Special pupil personnel services | $12,000 | $12,000 |
| Special curriculum revision programs | 20,300 | 6,800 |
| Teacher preparation programs | 6,768 | 6,768 |
| Total | $39,068 | $25,568 |

Information in the project file showed that the application was received in Region IV on September 4, 1970, and that the review and approval process had been completed on the same date.

Under the activity "Special Curriculum Revision Programs," the district outlined a single problem and need as follows:

> "Problem - There is no fully equipped science center in the district. A regular classroom without water or proper lab facilities is all that is available.
>
> "Need - A science laboratory fully equipped for student use with a revised instructional approach is needed to answer this dire need."

The application did not contain any other description of the program which the district proposed to pursue with the $20,300 requested for curriculum revision. The file did not contain any indication of the activity to be funded with the $6,800 provided for curriculum revision.

In our opinion, the project file contained insufficient information to (1) show the existence of a special need incident to the elimination of racial segregation and discrimination among students and faculty and (2) evaluate the reasonableness of the amounts requested or granted.

The uncertainty of the purposes of the grant was demonstrated, we believe, in an exchange of correspondence between the school district superintendent and regional officials. On October 13, 1970, the superintendent wrote to the Office of Education grants officer, saying:

> "Since you only approved $6,500 for building under Special Curriculum Revision, I am asking you to please let me transfer this amount to renovation and repair of existing buildings."

On October 26, 1970, the HEW senior program officer responded to the superintendent's request, saying:

> "After studying this request and the proposal originally approved, this office is unable to grant approval. As you know requests for building changes have a low priority in the ESA Program, and your request does not have sufficient information about the need for this change."

Use of ESAP funds for new construction or for major structural changes to existing buildings is prohibited by the general terms and conditions of the grants.

The Region IV program officer who reviewed the application told us that he thought that the science center could be related to a special need incident to the elimination of racial segregation and discrimination, because curriculum revision was always necessary in all desegregated systems to meet the needs of all students. In response to our question as to the purpose of the amount granted to the district for curriculum revision, the program officer said that he had assumed that the funds would be spent to improve the science curriculum.

- - - -

The following examples demonstrate the apparent reliance upon the funding levels in establishing the amounts granted to districts.

Winston-Salem City/Forsyth County
Board of Education
Winston-Salem, North Carolina

In the priority ranking, the Winston-Salem City/Forsyth County Board of Education, was assigned a numerical rating of 9, which meant that its funding level would be determined by multiplying the number of minority students in the district by $18. On this basis the established funding level for the district was $250,938.

On September 21, 1970, an application was received from the district for $390,441 in ESAP funds. This amount equals the number of minority students in the district multiplied by $28--the amount used in establishing funding levels for districts with a numerical rating between 10 and 12 in the priority ranking.

There was a note in the file, signed by one of the reviewing officials, showing that on September 25, 1970, the program officer had called the school district superintendent to explain that it would be necessary to reduce the district's budget to $250,938. The note showed also that the district previously had been given an incorrect figure as to its funding level.

The district submitted a revised budget outline for $250,738, which was received in Region IV on October 8, 1970, and which was reviewed and approved on October 9, 1970. In transmitting the revised budget the superintendent stated:

> "A reduction of this amount will necessarily affect the level of project services. In fact, the reduction resulted in the complete elimination of Special Pupil Personnel Services. While the other activities described in our project narrative are still intact, they have been cut back appreciably. A comparison of the original budget with the enclosed revised budget shows the degree by which each activity was reduced."

The narrative in the grant application did not indicate the nature of the changes intended in the project activities.

In addition, we noted that the district's application listed a number of problems in the areas of curriculum revision and teacher preparation, such as

--widely divergent levels of student academic performance;

--large number of students deficient in reading and other communication skills;

--instructional and human relations;

--inadequate time for teachers to participate in staff development workshops and other inservice activities; and

--at the high school level, much of the teachers' time must be spent in supervision of study halls.

In response to our inquiry as to how these problems represented special needs incident to the elimination of racial segregation among the students and faculty, the program officer acknowledged that these problems existed apart from the desegregation process but said that desegregation made the problems more pronounced.

Fulton County Board of Education
Hickman, Kentucky

The application of the Fulton County Board of Education for ESAP funds and other documents in the files indicated the existence of serious racial tension in the Fulton County schools, which had culminated in a suit in the Federal courts over the expulsion of eight black students from the high school. The district attributed its problems of racial tension to a number of factors, including overcrowded facilities and inadequate numbers of employees. The application indicated that the crowded conditions and the dissent between the races could be greatly reduced by the purchase of two mobile classroom units and by the employment of two additional teacher-aides, one additional guidance counselor, and one registered nurse.

The district requested ESAP funds of $46,595 for the following activities:

| | |
|---|---|
| Special pupil personnel services (guidance counselor and nurse) | $18,479 |
| Teacher preparation programs (teacher-aides) | 4,716 |
| Special comprehensive planning (mobile classroom units) | 23,400 |
| Total | $46,595 |

The application was received in Region IV on September 5, 1970, and assigned on that date to three program officers for review. Two program officers recommended that the application be funded for $4,430--$2,072 for special pupil personnel services and $2,358 for teacher preparation programs. The third program officer recommended funding for $4,500--all for teacher preparation programs. The established funding level for the district was $4,430.

On September 8, 1970, the superintendent wrote to HEW that, in compliance with suggestions made by the program officer for Kentucky, the district had revised its budget outline to show special pupil personnel services at $2,072 and teacher preparation programs at $2,358, making a total of $4,430, the amount of the established funding level. The review sheet, prepared by the program officer, showed that employment of a guidance counselor and a nurse was considered to be a long-range need but there was nothing in the file to show what activities were intended to be accomplished with the amount granted. The program officer could not recall why she had thought the guidance counselor, the nurse, or the classrooms were not needed. She said that the intention was that the funds granted would be used to hire teacher and counselor aides and that this intention had been communicated to the district by telephone.

SUPPLEMENTING AND SUPPLANTING OF FUNDS

All but one of the 28 applications included in our review contained, as required by the regulations, signed assurances that ESAP funds would be used only to supplement, not supplant, funds which were available to the school district from non-Federal sources for purposes that met the requirements of the program. In addition, the application form requires a statement of the amount of non-Federal funds available to the school district both before and after desegregation and an explanation of any decrease in the amount after desegregation. Regional officials told us that they had accepted the signed assurances at face value, in the absence of an indication that the assurances were not valid.

In the applications filed by Hoke County, North Carolina; Dade County, Florida; and Jackson, Mississippi; the amounts of non-Federal funds available before and after desegregation were not shown. Also, the assurances in the Hoke County application were not signed. The applications filed by Houston, Mississippi; Tarboro, North Carolina; and Winston-Salem City/ Forsyth County, North Carolina, indicated that there were no non-Federal funds available either before or after desegregation.

The program officer for Hoke County told us that the grant should not have been approved without the assurances being signed and that he would get them signed as soon as possible. The program officers for the other school districts offered no explanations for approval of the applications lacking of required information but stated that they would follow up on this matter during their postgrant reviews to these districts.

The application filed by Hinds County, Mississippi, showed a decrease of $629,000 in non-Federal funds available after implementation of the desegregation plan but attributed this decrease to a decline in enrollment and to the formation of a new school district. Also the Carroll County, Georgia, application showed a decrease of $189,150 in such funds and attributed it to a decline in transportation needs.

We noted one case in which information on the application indicated the possibility that ESAP funds might be used to supplant non-Federal funds available to the school district before desegregation. Crisp County, Georgia, applied for and received $55,125 to hire 21 teacher-aides. The application showed, under the school district's planned program for the 1970-71 school year, that, without ESAP funds, eight teacher-aides could be hired but that, with ESAP funds, 21 aides could be hired. Since ESAP funds were provided for all 21 teacher-aides, it appears that the non-Federal funds available for the eight aides who would have been hired in the absence of ESAP may have been supplanted with ESAP funds.

We noted another case where information became available after the grant was made that indicated that ESAP funds might have been used to supplant non-Federal funds otherwise available to the school district. Madison County, Florida, applied for $50,000 to purchase five relocatable classroom units. On September 10, 1970, the district's application was approved for $50,000, but HEW changed the amount for the relocatable classroom units to $48,000 and provided $1,500 for teacher preparation programs and $500 for special student-to-student programs (with no detail explanation as to the specific purpose of the funds provided for these other activities). On October 22, 1970, the district's request for an advance of funds showed that a contract for construction of the relocatable classroom units was awarded on August 7, 1970. Since funds for ESAP were not appropriated until August 18, 1970, and since the district's application was not approved until September 10, 1970, it appears that ESAP funds may have been used to supplant non Federal funds which would have been required to pay for the relocatable units if the ESAP grant had not been made.

We intend, in our follow-on visit to the Crisp County and Madison County school districts, to examine into the possibility that ESAP funds were used to supplant non-Federal funds.

## ADEQUACY OF PROCEDURES FOR EVALUATION OF PROJECT EFFECTIVENESS

In our opinion, the applications for most of the 28 grants included in our review did not contain, contrary to the regulations, adequate descriptions of methods, procedures, and objective criteria which would permit an independent evaluation of the effectiveness of the projects assisted. We noted that certain applications showed goals of, or expected achievements from, planned evaluations of program activities but that they did not show the methods or objective criteria which could be used to measure the success of the activities.

## TRANSFER OF PROPERTY TO NONPUBLIC SEGREGATED SCHOOLS

All but one of the 28 applications included in our review contained, as required by the regulations, signed assurances that the applicants had not engaged in, and would not engage in, the transfer of property or services to any nonpublic school or school system which practiced racial discrimination.

HEW officials told us that the assurances were accepted at face value, in the absence of information to indicate that they were not valid, and that no other information concerning possible transfers to nonpublic schools had been sought in the review and approval of the applications. As previously mentioned, the assurances in the application filed by Hoke County, North Carolina, had not been signed. None of the applications we examined showed the transfer of property to nonpublic schools.

Regional officials told us that transfers of property to nonpublic schools would be considered during their postgrant reviews at the school districts.

## TEACHER AND STAFF ASSIGNMENT AND SEGREGATED CLASSES

The regulations require assurances that (1) teachers and staff members who work directly with children at a school will be assigned in a manner that will result in the ratio of minority to nonminority teachers and to other staff in each school that is substantially the same as the ratio for the entire school system and (2) no discriminatory practices or procedures, including testing, will be employed in the assignment of children to classes or in carrying out other school activities.

Program officers told us that these assurances by school district officials were accepted at face value, in the absence of an indication that they were not valid, and that no other information on this point had been sought in the review and approval of the applications. As previously stated, the assurances in the application filed by Hoke County, North Carolina, had not been signed.

## ESTABLISHMENT OF ADVISORY COMMITTEES

### Biracial advisory committees

The files for three of the 28 school districts included in our review (Dade County, Florida; Atlanta, Georgia; and Jackson, Mississippi) showed that the districts had biracial committees formed pursuant to a court order. The files for these districts contained evidence that the biracial committees concurred in the applications submitted by the districts.

The files for 11 of the remaining 25 districts either (1) indicated that committees which met the requirements of the regulations had been formed or (2) listed the names of five to 15 organizations which would be asked to appoint members to biracial committees. Some of these districts stated in their applications that appropriate committees would be formed within 30 days after approval of the grant.

The applications submitted by the remaining 14 districts did not satisfy the requirements of the regulations with respect to the formation of biracial committees in that they (1) did not list organizations from which members had been or would be appointed, (2) did not show the race of committee members or did not meet requirements for equal representation of minority and nonminority membership, (3) did not show that at least 50 percent of committee membership were parents of children directly affected by the program, or (4) listed committees which had been appointed by local officials, apparently without the benefit of assistance from organizations representative of the communities to be served by the programs. Program officers told us that they generally assumed proper biracial committees would be formed and that the formation and functioning of such committees would be followed up on during their postgrant reviews.

### Student advisory committees

The applications filed by 21 of the 28 districts included in our review did not contain, contrary to the regulations, assurances that a student advisory committee would be formed in each secondary school affected by the project. The project proposed by one district (Tarboro, North Carolina) did not involve any secondary schools.

We believe that the districts may not have furnished these assurances because the application form does not contain this assurance item and the instructions for completing the form do not mention it.

The comments of program officers concerning student advisory committees were essentially the same as those concerning biracial advisory committees.

## PUBLICATION OF PROJECT TERMS

The regulations require an assurance that the applicant will, within 30 days after project approval, have published in a local newspaper of general circulation either the terms and provisions of the approved project or pertinent information as to where and how the terms and provisions of the approved project are reasonably available to the public. Program officers told us that the assurances provided by the school districts were accepted at face value and that verifications of publication would be made during their postgrant reviews at the school districts.

## CHAPTER 5

## COMMENTS ON HEW DALLAS REGIONAL OFFICE PROCEDURES FOR APPROVING GRANTS UNDER ESAP

HEW Region VI, with headquarters in Dallas, Texas, encompasses the five States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas. According to Office of Education statistics, 2,432 school districts were operating public schools in these States in the fall of 1969. As of August 26, 1970, 387 school districts were identified by HEW as being potentially eligible for assistance under ESAP. Of these 387 school districts, 200 had received grants totaling over $14 million as of November 13, 1970. Our review included 12 of these grants totaling about $5.4 million. (See app. III.)

We believe that the Dallas Regional Office did not require the school districts to comply with several pertinent requirements of the ESAP regulations. In our opinion, the majority of the applications did not contain, although required by regulations, comprehensive statements of the problems faced in achieving and maintaining desegregated school systems, nor did they contain adequate descriptions of proposed activities designed to effectively meet such problems. Particularly, there was a lack of documentation as to how the proposed activities would meet the children's special needs resulting from the elimination of racial segregation and discrimination in the schools.

Regional officials in general agreed that the applications did not contain adequate statements of the problems or descriptions of the activities designed to meet these problems. They told us, however, that they had satisfied themselves in these respects, prior to project approval, on the basis of their knowledge of the school districts' problems and their contacts with school officials in obtaining additional information. The additional information that was known or obtained, however, was not documented in the project files. We were, therefore, unable to determine whether ESAP funding decisions were based on consideration of the applicants' needs for assistance, the relative potential of the projects, or the extent to which the projects dealt with the problems faced by the school districts in desegregating their schools.

Most of the applications, in our opinion, did not contain, although required by regulations, an adequate description of the methods, procedures, and objective criteria, which could be used by an independent organization to evaluate the effectiveness of each program activity.

The files supporting most of the 12 grants did not evidence full compliance by the districts with the regulations concerning the formation of biracial and student advisory committees and publication of the terms and provisions of the ESAP projects.

We noted that Louisiana law requires that school districts furnish school books and supplies to students in private schools and that transportation may be furnished to students attending parochial schools. Regional officials contacted 14 Louisiana school districts prior to grant approval and determined that the majority had transferred property or provided transportation to private schools under the State law. HEW officials advised us, however, that they had decided to certify the Louisiana school districts as eligible for ESAP funding if they had no indications of civil rights violations other than the transfers allowed by Louisiana law.

We did not note any information in the regional office files which indicated that the school districts (1) were discriminating on the basis of race in teacher and professional staffing patterns, (2) were assigning children to classes on the basis of their being members of minority groups, or (3) would use their ESAP grants to supplant funds which were available to them from non-Federal sources for purposes of the program.

## ELIGIBILITY AND FUNDING OF SCHOOL DISTRICTS

To allot ESAP funds to the five States in Region VI, HEW/Washington determined that there were a total of 387 potentially eligible school districts in the region as of August 26, 1970. Because there were 911,852 minority students in these 387 potentially eligible school districts, the Office of Education, through use of the formula previously described on page 7, allotted over $16 million to school districts in these States, as set forth below.

| State (note a) | Number of potentially eligible school districts | Number of minority students | State allotment |
|---|---|---|---|
| Arkansas | 126 | 105,527 | $ 1,967,479 |
| Louisiana | 65 | 338,765 | 6,316,043 |
| Oklahoma | 22 | 14,312 | 266,837 |
| Texas | 174 | 453,248 | 8,026,875 |
| Total | 387 | 911,852 | $16,577,234 |

[a] Region VI also includes the State of New Mexico. However, since this State had no school districts implementing court-ordered or voluntary desegregation plans, it could not qualify for assistance and did not receive an allotment.

The regulations require that a school district, to be eligible for ESAP assistance, must have commenced the terminal phase of its voluntary or court-ordered desegregation plan during either the 1968-69, 1969-70, or 1970-71 school year.

Region VI required applicants to submit an assurance of compliance with this regulation and a copy of their desegregation plans. Our review of the 12 projects showed that the applicants had submitted data which appeared to be satisfactory in this regard. Of the 12 school districts, nine were operating under voluntary desegregation plans and three were operating under Federal-court-ordered plans.

The Chief of the Education Division, Office for Civil Rights, told us that the definition of the terminal phase of a desegregation plan, as applied in Region VI, meant the beginning of that phase of the plan where no schools within a school district were racially identifiable; i.e., where there was no assignment of students and teachers to schools on the basis of race, color, religion, or national origin.

The official told us that, in the case of a court-ordered desegregation plan, his office relied strictly on the date set by the court in determining whether the applicant was in the terminal phase as defined by the regulations. He indicated that there would be little, if any, other information available since the Department of Justice was responsible for monitoring a school district's compliance with court-ordered desegregation plans and that his office had not been involved with school districts which were desegregating under court order until ESAP was implemented.

With respect to a voluntary desegregation plan, the Chief of the Education Division told us that his office also relied on the date that the school district implemented its desegregation plan in determining whether the applicant was in the terminal phase. He explained, however, that, in the case of a school district under a voluntary plan, his office would have a file on the district which would contain information on whether the voluntary plan had been approved by HEW and whether there was any indication of noncompliance based on past onsite reviews, pregrant audits, or complaints received from the district.

HEW determined, on the basis of the foregoing factors, that each of the 12 school districts included in our review were in the terminal phase of desegregation prior to project approval.

After ESAP funds were allocated by HEW/Washington to the States in Region VI, regional officials established maximum funding levels for eligible school districts within each State using the priority ranking system established by the Office of Education, Washington. (See p. 23.)

The senior program officer told us that the amounts so computed were used as control figures, in that applicant school districts could not be approved for funding in excess of these amounts. He said that such a control was necessary in the early stages of the program to ensure that available funding would not be exhausted before all eligible districts had an opportunity to participate, because it was not known how many eligible districts would submit applications. He told us also that, as the program progressed, it became evident that not all school districts would be eligible for assistance and that others would not wish to participate in the program. As a result, additional funds were available to supplement those projects that had already been approved and to increase the funding level, where justified, of projects pending approval.

Regional officials told us that school districts were not notified of the maximum funding levels until after they had developed their proposed programs. The officials stated that, during initial workshop conferences and in orientation conferences held in each State prior to the workshop sessions, school district officials were asked to identify their most critical desegregation problems and to develop program activities that would contribute to solving these problems. The senior program officer said that the estimated costs of programs developed by the school districts, in most instances, were in excess of their established funding levels and that during the workshop sessions regional officials assisted the school districts in revising their proposals downward to stay within their funding levels. Generally, the results of these workshop sessions were not documented in the project files.

We compared the amounts established as maximum funding levels with the amounts of the grants initially received by the 12 school districts included in our review and found that eight districts received grants that were within 3 percent of their established funding levels. The other four grants were substantially above or below the school districts' funding levels. We noted also that four of the districts, which were initially funded at less than their maximum funding levels, later received supplemental grants which resulted in their total grant amounts exceeding their funding levels. Generally, the inadequacies, noted by us in the basic applications, of the descriptions of problems incident to desegregation and needs of the school districts were true of the requests for supplemental funds. These inadequacies are discussed in detail in the following section of this report.

## PROJECT POTENTIAL AND CONTENT

We believe that, of the 12 applications included in our review, at least seven had inadequate information concerning the problems faced by the school district in achieving and maintaining a desegregated school system; particularly, the assessments of the needs of the children in the school systems appeared to be inadequate. We believe also that 10 applications, including the seven above, did not, in many areas, provide sufficient information to establish the existence of special needs incident to desegregation.

Regional officials in general agreed that the applications did not contain adequate statements of the problems or descriptions of the activities designed to meet these problems. They told us, however, that they had satisfied themselves in these respects, prior to project approval, on the basis of their knowledge of the school districts' problems and their contacts with school officials in obtaining additional information considered necessary. The additional information that was known or obtained, however, was not documented in the project files. Therefore, we were unable to determine whether ESAP funding decisions were based on a consideration of the applicants' needs for assistance and the relative potential of the projects.

The following is an example of a description of a problem contained in a grant application which we believe was not adequate to show that the problem resulted from desegregation activities.

### Houston Independent School District
### Houston, Texas

The Regional Commissioner of Education approved ESAP funding in the amount of $212,792 for the Houston Independent School District under the category of "special curriculum revision" programs. The applicant's entire statement of the problem in that area was:

> "The relevancy of all curricula, and especially the social studies curriculum, are suspect in a multi-ethnic school environment."

We believe that this statement is nebulous and does not effectively deal with specific problems that may have existed at the time the application was submitted or that may be expected to develop if a curriculum revision is not forthcoming. Furthermore, the application did not include a comprehensive assessment of the needs of the children in terms of curriculum revision nor did it provide sufficient information to allow a determination that this was an emergency problem resulting from the desegregation of the Houston school system.

The program officer agreed that the Houston application was not adequate to provide a basis for a funding decision. However, he told us that, on the basis of the regional reviewers' knowledge of the school district, the information provided in the application, and the additional contact with the school administrators, the regional reviewers had been able to assure themselves that emergency problems stemming from desegregation did in fact exist, that the needs were valid in light of the problems faced, and that the proposed projects were designed to effectively deal with these problems. He told us that he had obtained information from school district officials which indicated that the district's curriculum was geared primarily to white students and was not related to needs of students of other ethnic backgrounds. On this basis he concluded that the curriculum revision program was needed. This information, however, was not documented in the project file.

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The following are examples of inadequate descriptions of proposed activities set forth in certain applications which did not show how the proposed activities would help meet the special needs incident to the elimination of segregation as required by the regulations.

Orleans Parish School Board
New Orleans, Louisiana

The Regional Commissioner of Education approved ESAP funding in the amount of $1,953,400 for the Orleans Parish School Board (New Orleans, Louisiana) on October 19, 1970. We noted in our review of the application that items in the approved budget totaling $372,500 (or about 19 percent of the total) were neither described nor accounted for in the cost breakdown or narrative sections of the application. Therefore, regional officials were not aware of the purposes for which these grant funds were to be spent. As a result of our questioning the adequacy of the information supporting this portion of the grant, regional officials wrote to the grantee on December 23, 1970, requesting that proper justification of these items be submitted to the regional office.

San Antonio Independent School District
San Antonio, Texas

The Regional Commissioner of Education approved ESAP funding in the amount of $1,165,300 for the San Antonio Independent School District (San Antonio, Texas) on October 14, 1970. Our review of the application showed that funds in the amount of $105,120 were approved for a community information program designed to promote acceptance of desegregation by accurately informing parents, students, and patrons concerning the goals and activities of the school. The application outlined considerable costs for employee salaries, contracted services, and supplies and equipment, without any description as to how these personnel and supplies and equipment were to be used to solve the communication problem.

Also, funds in the amount of $104,630 were approved for this project under "special pupil personnel services," for the hiring of diagnosticians to conduct physiological and psychological evaluations of 1,000 pupils. The application did not describe the qualifications of the personnel to be employed, the evaluations to be performed, nor how the evaluations would meet the special needs of the school district.

The program officer agreed that the San Antonio application was not comprehensive but told us that the funding decision was based on his knowledge of the school district, the information in the application, and additional information obtained from the applicant as considered necessary. He said that he had obtained the additional information from the applicant on how the personnel and supplies and equipment were to be used to solve the communication problem, the qualifications of the diagnosticians to be hired, and the type of evaluations they would perform. However, the information obtained was not documented in the project file.

### Jackson Parish School Board
### Jonesboro, Louisiana

The Regional Commissioner of Education approved ESAP funding in the amount of $42,000 for the Jackson Parish School Board (Jonesboro, Louisiana) on October 2, 1970. The applicant had requested $43,000--$23,000 under special curriculum revision programs and $20,000 under special comprehensive planning. However, the regional reviewers deleted $13,000 from special curriculum revision programs and the entire $20,000 from special comprehensive planning. They then added a total of $32,000 under a new activity--teacher preparation programs--through telephone negotiations with the applicant. The applicant, however, was not required to submit any new information to define the problem or describe how the new activity would be accomplished.

We discussed the lack of information in the application with the program officer who informed us that, during his discussions with representatives of the school district, it was determined that the district had a greater need for a teacher preparation program, which consisted primarily of hiring teacher aides, than it had for the program activities deleted from the application. However, the information which was used as a basis for the determination was not documented in the project file.

## SUPPLEMENTING AND SUPPLANTING OF FUNDS

The applications submitted by the 12 school districts covered in our review contained, as required by the regulations, signed assurances that ESAP funds would be used only to supplement non-Federal funds available to the school district for the purposes of the program.

We were advised by the senior program officer that, in those instances where the application showed that non-Federal funds available to a school district had increased after its court-ordered or voluntary desegregation plan was implemented, the program officers were not concerned and performed no investigative efforts. He said that, in those instances where a decrease in non-Federal funds was shown and proper justification was not contained in the application, further investigation was made. He pointed out that, to determine the validity of this type of information, an audit of the applicant's records would be required.

## ADEQUACY OF PROCEDURES FOR EVALUATION OF PROJECT EFFECTIVENESS

In our opinion, eight of the 12 applications we reviewed did not contain, although required by the regulations, an adequate description of the methods, procedures, and objective criteria that could be used by an independent organization to evaluate the effectiveness of each program activity.

We found that certain applicants showed goals of, or expected achievement from, planned evaluations of program activities. They did not show methods or objective criteria which could be used to measure the success of the activity. For example, the Regional Commissioner approved ESAP funding in the amount of $1,165,300 for the San Antonio Independent School District (San Antonio, Texas) on October 14, 1970, including $220,785 for special community programs. Concerning this program category, the following comments appeared with respect to evaluating the effects of two of the activities.

1. "If the proposed activities are successful, there will be an increased understanding of the school's goals and greater acceptance of desegregation efforts."
2. "If the proposed procedures are successful, a higher percentage of the patrons of the school will become more aware of the school's major goals."

No comments were set forth as to the methods, procedures, or objective criteria to be used in evaluating the activities.

For some of the proposed activities, the applications did not contain any comments relative to the procedures and criteria for evaluating program activities and the program officers did not obtain the submission of the required information.

## TRANSFER OF PROPERTY TO NONPUBLIC SEGREGATED SCHOOLS

All 12 applications included in our review contained, as required by the regulations, a signed assurance that the applicant had not engaged, and would not engage, in the transfer of property or services to any nonpublic school or school system which practiced discrimination.

The Chief of the Education Division, Office for Civil Rights, Region VI, said that, when an application was received, his office performed either a file review or a pregrant audit at the school district and, on the basis of the results, certified to the regional Office of Education that the applicant was or was not in compliance with the nondiscrimination requirements of the regulations.

He explained that during the file review the most current report on an onsite visit and any information on complaints or alleged civil rights violations in the district subsequent to such visit were considered. He added that, if the applicant was under a court-ordered desegregation plan, his staff relied on the written assurance of the school district that it was in compliance with the court order since there would be very little, if any, information in the files on such districts. He said that the only instances where his office did not rely solely on the applicant's assurance was when a pregrant audit was made. He explained that a pregrant audit involved a visit to the applicant school district and a thorough check of all aspects of civil rights compliance.

Three of the 12 school districts were operating under Federal court-ordered desegregation plans. In two of these cases, regional officials relied completely on the assurance of the applicants that they would comply with the court order. No site visits, pregrant audits, or other types of investigation were made prior to project approval as a basis for regional certification that these two applicants were in compliance with this requirement of the regulations. Regional officials performed a pregrant audit for the other court-ordered district on October 14, 1970, 5 days prior to grant approval, which showed that the applicant was in compliance with the regulation requirement.

The other nine school districts were operating under voluntary plans of desegregation. For these school districts, no pregrant audits were made and regional certifications of compliance were based on reviews of the existing files for each school district. Our review of the files of these nine districts showed that the region had made onsite visits to eight of them. Six of the eight onsite visits had been made from 10 to 11 months prior to the dates of grant approval and two were made within 1 week of the grant approval dates. The reports on the onsite visits did not show any civil rights problems, and the files did not contain any evidence of civil rights complaints or violations at the time such grants were approved.

### Transfer of property under Louisiana law

The Chief of the Education Division, Office for Civil Rights, Region VI, told us that the Louisiana State law provides that school districts furnish school books and school supplies to students in private schools and that transportation may be furnished to students attending parochial schools. He said that, after giving consideration to the Louisiana State law and other indications of possible violations, regional officials decided in early September 1970 that they could not at that time certify that the Louisiana school districts were in compliance with the nondiscrimination requirements of the regulations and the officials requested a ruling from the Office for Civil Rights, Washington, on the eligibility of the school districts for ESAP funding. At that time, the school district applications were placed in a "hold" status awaiting a decision by the Washington office.

Pending the decision by the Washington office, the regional officials decided to make pregrant audits of 14 Louisiana school districts to determine whether these school districts had made transfers to private schools and whether the districts were complying with the nondiscrimination requirements of the regulations.

The Chief of the Education Division told us that during the pregrant audits, the superintendent of each school district signed a separate statement which certified that the district either did or did not transfer property or provide transportation to private schools. He said that, through the pregrant audits and telephone conversations, it was determined that a majority of the school districts did transfer property or provide transportation to private schools.

For the two Louisiana districts included in our review, Orleans Parish was audited by the HEW regional office before grant approval and Jackson Parish was audited after grant approval. These audits revealed that neither district had transferred property or provided transportation to private schools.

The Chief of the Education Division told us that, in a meeting with an official of the Office for Civil Rights, Washington, about October 12, 1970, it was finally decided that, if the pregrant audit or the telephone inquiries showed no civil rights violations other than the transfers which are allowed by Louisiana State law, the Office for Civil Rights would certify that the Louisiana school districts in "hold" status were in compliance with the regulations and would declare them eligible for ESAP funding.

## TEACHER AND STAFF ASSIGNMENT AND SEGREGATED CLASSES

All 12 applications contained, as required by the regulations, signed assurances that the districts were in compliance with the regulation requirements concerning (1) discrimination in teacher and professional staffing patterns and (2) discriminatory practices or procedures, including testing, used in assigning children to classes or in carrying out curricular or extracurricular activities within the schools.

In addition to obtaining these assurances, regional officials either performed a file review or made pregrant audits of the school districts as discussed in the previous section of this report. (See p. 49.)

## ESTABLISHMENT OF ADVISORY COMMITTEES

### Biracial advisory committees

Our review showed that many of the 12 school districts had not complied with the regulation requirements concerning the formation of biracial advisory committees.

Two of the 12 school districts planned to use court-appointed advisory committees. One of these districts had complied with the regulation requirements in most respects. The second district, however, had been unable to meet the requirements because of a lack of action on the part of the court (Federal) in appointing committee members.

The other 10 districts were required to form advisory committees within 30 days of approval of their applications. We found that three or more of these districts had not submitted information showing (1) the community organizations from which members of the advisory committees were to be appointed, (2) the minority and nonminority composition of the advisory committees, (3) that parents of children to be directly affected by the project comprised at least 50 percent of the committee membership, (4) that the names of the advisory committee members had been made public, and (5) that the committees had been formed within 30 days of project approval.

We discussed these matters with regional officials who informed us that they would follow up on these and other regulation requirements during their program monitoring visits to the school districts. Our review of the reports prepared on visits to six school districts showed that the program officers followed up in some of the districts to determine if the districts had complied with the regulation requirements concerning biracial committees but that there was no indication of follow-up for others.

For example, one district's advisory committee was not comprised of equal numbers of minority and nonminority members. Although this imbalance in the committee structure was known by the responsible program officer and, in our opinion, should have been corrected at the time of his visit to the district in early December 1970, no corrective action was initiated until we brought the condition to his attention.

Student advisory committees

We found that, of the 10 school districts included in our review which were required by the regulations to form student advisory committees, only three submitted assurances that such committees would be formed. It appears, on the basis of our discussion with the senior program officer, that the assurances were not provided because the application instructions made no provision for submission of the assurance with the application even though it was required by the regulations.

Our review of the files showed, however, that seven of the 10 districts had formed student advisory committees. For two of the remaining three districts, there was no information in the project files showing that such committees had been formed. Regional officials told us that they did not know whether the committees had been formed but that they planned to follow up on this matter when they made their monitoring visits to the school districts. Although a visit report on the third district showed that a committee would be formed by December 10, 1970, the regional office had not received confirmation that the committee had been formed as of January 8, 1971.

PUBLICATION OF PROJECT TERMS

All 12 of the applications contained, as required by the regulations, the assurance that the applicant would publish the terms and provisions of the project in a local newspaper within 30 days of project approval.

Our review showed that newspaper publications were on file for four of the 12 school districts and that only one of the four had publicized the required information within 30 days of the project approval. The elapsed time from project approval to publication ranged from 55 to 79 days for the other three districts.

The project files did not include information on the required newspaper publications in the remaining eight projects, although the 30-day period had elapsed in all cases. The senior program officer told us that compliance with the publication requirement was to be verified by the program officers during their first visits to the school districts. Although visits had been made to four of these districts, our review of the project files, including assessment reports, indicated that this requirement had not been complied with at the time of the assessment visits or when we subsequently discussed this matter with the individual program officers. The elapsed time from the project approval to the date of our discussions ranged from 58 to 97 days.

## CHAPTER 6

## COMMENTS ON HEW PHILADELPHIA REGIONAL OFFICE PROCEDURES FOR APPROVING GRANTS UNDER ESAP

HEW Region III, with headquarters in Philadelphia, Pennsylvania, encompasses the five States of Delaware, Maryland, Pennsylvania, Virginia and West Virginia and the District of Columbia. According to Office of Education statistics, 840 school districts were operating public schools in this region in the fall of 1969. As of August 26, 1970, 89 school districts were identified by HEW as being potentially eligible for assistance under ESAP. Of these 89 school districts, 59 had received grants totaling about \$4.7 million as of November 13, 1970. Our review included seven of these grants totaling over \$1.1 million. (See app. III.)

We believe that the Philadelphia Regional Office did not require the school districts to comply with several pertinent requirements of the ESAP regulations. In our opinion, most of the applications did not contain, contrary to the regulations, comprehensive statements of the problems faced in achieving and maintaining desegregated school systems, nor did they contain adequate descriptions of the proposed activities designed to effectively meet such problems. Particularly, there was a lack of documentation as to how the proposed activities would meet the children's special needs which resulted from the elimination of racial segregation and discrimination in the schools. Regional officials told us that, on the basis of their knowledge of the school districts, their educational experience, and additional information obtained from school district officials, they believed that the projects merited approval.

Most of the applications, in our opinion, did not contain, contrary to the regulations, an adequate description of the methods, procedures, and objective criteria that could be used by an independent organization to evaluate the effectiveness of each program activity. Also the files supporting some of the seven grants did not contain evidence that the school districts were in full compliance with the regulations concerning the formation of biracial and student advisory committees.

Regional officials accepted the signed assurances of the school districts that they were in compliance with the requirement of the regulations concerning discrimination in teacher and professional staffing patterns. For one of the districts (Prince Georges County, Maryland), information in the regional office files, at the time the school district's application was reviewed, showed that the ratio of minority to nonminority faculty in each school within the district was not substantially the same as the ratio for the entire school system, contrary to the regulations. We believe that, because this information was available in the regional office files prior to project approval, regional officials should have contacted school district officials to determine what action was being taken or planned to comply with this requirement of the regulations. By letter dated February 2, 1971, the Regional Director, Office for Civil Rights, requested the superintendent of the district to comply with the assurance given in the ESAP application.

None of the seven applications contained details concerning the qualifications of consultants or other persons who were to be employed for project activities requiring persons having special expertise.

We did not note any information in the regional office files which would lead us to believe that the school districts (1) had transferred any property or services to nonpublic schools which practiced racial discrimination, (2) were assigning children to classes on the basis of their being members of minority groups, or (3) would use their ESAP grants to supplant funds which were available to them from non-Federal sources.

## ELIGIBILITY AND FUNDING OF SCHOOL DISTRICTS

To allot ESAP funds to the States in Region III, HEW/Washington determined that there were a total of 89 potentially eligible school districts in the region as of August 26, 1970. On the basis of the 297,802 minority students in these 89 potentially eligible school districts, the Office of Education, through use of the formula previously described on page 7, allotted about $5.5 million to school districts in these States, as set forth below.

| State (note a) | Number of potentially eligible school districts | Number of minority students | State allotment |
|---|---|---|---|
| Maryland | 6 | 43,447 | $ 810,040 |
| Pennsylvania | 11 | 25,528 | 475,952 |
| Virginia | 71 | 228,387 | 4,258,120 |
| West Virginia | 1 | 440 | 8,203 |
| Total | 89 | 297,802 | $5,552,315 |

[a] Region III also includes the State of Delaware and the District of Columbia. Delaware did not have any potentially eligible school districts, and the District of Columbia had entered the terminal phase of its desegregation plan prior to the 1968-69 school year; therefore, they did not receive allotments.

The regulations require that, for a school district to be eligible for ESAP assistance, it must have commenced the terminal phase of its voluntary or court-ordered desegregation plan during the 1968-69, 1969-70, or 1970-71 school year. The application form requires the applicant to attach a copy of its desegregation plan to its application. Of the seven school districts included in our review, four were under voluntary desegregation plans and three were under Federal court order to desegregate.

The Chief of the Education Division, Regional Office for Civil Rights, told us that, prior to approval of an application, his staff had reviewed the file on the applicant school district for any information that might indicate that the district was not in compliance with the nondiscrimination requirements of title VI of the Civil Rights Act of 1964. With respect to the seven projects included in our review, his office determined the eligibility of these districts as follows.

The eligibilities of two Virginia school districts (Dinwiddie and Powhatan) and one Maryland school district (Dorchester) were approved on the basis of letters sent by the Washington Office for Civil Rights in 1969 to these school districts, which stated that they were in compliance with title VI of the Civil Rights Act of 1964. The Norfolk, Virginia, school district was approved on the basis of the personal knowledge of the Chief of the Education Division concerning the court order placing the school district in the terminal phase of desegregation. This official stated that the eligibility of the Prince Georges County, Maryland, school district was determined after his review of the district's desegregation plan. He certified to the eligibilities of the two Pennsylvania school districts (Harrisburg and Susquehanna) on the basis of instructions from the Washington Office for Civil Rights which, in turn, relied on HEW's Office of General Counsel to determine the eligibilities for the Pennsylvania school districts. An Office of General Counsel official told us that, as long as a Pennsylvania school district was in compliance with the State of Pennsylvania's human relations commission desegregation orders, the school district was considered by HEW to be in a terminal stage of desegregation and eligible to participate in ESAP.

After ESAP funds were allotted by HEW/Washington to the States in Region III, regional officials used the priority-ranking system established by the Washington Office of Education as a basis for determining the relative needs of the school districts. (See p. 23.)

The senior program officer told us that funding levels were not established by Region III personnel in making grants to the school districts. He said that the amounts of grants in Region III had been determined by the program officers on the basis of their evaluations of the problems and needs set forth in the applications and their discussions with school district officials.

## PROJECT POTENTIAL AND CONTENT

Of the seven applications included in our review, at least four, in our opinion, did not contain adequate statements of the problems faced by the school districts in achieving and maintaining desegregated school systems. Also we believe that the program descriptions did not provide sufficient information to allow determinations that the proposed assistance would meet emergency or special needs resulting from desegregation. Regional officials expressed the view that, on the basis of their knowledge of the school districts, their educational experience, and supplemental information obtained from school district officials, they were in a position to pass on the merits of the projects.

Following are examples of descriptions of problems contained in grant applications which, we believe, were not adequate to show that the problems resulted from desegregation activities.

### Harrisburg City School District
### Harrisburg, Pennsylvania

The Harrisburg City School District received a $50,723 grant on October 30, 1970. The only problem in the project application was described as:

> "A significant educational problem facing the School District is the number of students of the age group to be served by the new middle school who demonstrate a lack of positive attitude toward school and school work."

The application was reviewed by three regional program reviewers. One reviewer, in recommending approval, stated:

> "Although there is a well developed proposal manifesting careful and thoughtful planning, its relationship to racial problems appears to be weak."

Another reviewer, in recommending disapproval, stated:

> "This project appears to be designed for general education upgrading as opposed to helping to solve problems relative to integration as now exist."

A third reviewer recommended approval without making any comment.

The program officer informed us that he had spoken to Harrisburg school district officials subsequent to the above comments by the reviewers and had obtained supplemental information regarding the project's relationship to desegregation.

The information obtained from these officials was to the effect that desegregation had placed students of different educational levels and backgrounds in the same classrooms and in sections of the city that were not familiar to them, and that, in some cases, these students had become disruptive and it had been necessary to devise ways to cope with them. According to the program officer, the Harrisburg officials also stated that, because of desegregation, staff and teachers needed to be taught to cope with student problems resulting from the students being placed in new situations not familiar to them or to the teachers.

The program officer told us that, after he relayed this information to the other reviewers, they agreed that the project was acceptable for funding under ESAP. None of these discussions were documented in the project file.

Susquehanna Township School District
Harrisburg, Pennsylvania

Susquehanna Township School District received a $17,100 grant on October 30, 1970. The project application stated that it was desirable to have guidance and counseling services at the elementary-school level not only from the viewpoint of all students but also from the viewpoint of assisting and ensuring satisfactory educational adjustments to students involved in integration. However, the project application referred to the school district's experience, since the school system was desegregated in 1968, as indicating that racial problems caused by integration were almost nonexistent in the elementary schools.

With respect to the latter statement, the program officer told us that this statement meant that there had been no major problem, such as violence, during the last 2 years. The program officer stated also that he had contacted the suprintendent of the school district and had been informed that there was a communication problem between white teachers and black students and that the provision of counseling services was the best way to resolve the problem. This additional information was not documented in the project file.

## SUPPLEMENTING AND SUPPLANTING OF FUNDS

The seven applications reviewed by us contained assurances, as required by the regulations, that ESAP funds made available to the applicants would be used only to supplement and increase the level of non-Federal funds available to the applicants for the purposes of ESAP. The amounts of non-Federal funds budgeted before and after implementation of the court-ordered or voluntary desegregation plans were included in the project applications. Our review of this data showed that there had been no decrease in the school districts' budgets for non-Federal funds after the court-ordered or voluntary desegregation plans had been implemented.

The Chief of the Education Division, Regional Office for Civil Rights, told us that, to ensure that school districts were complying with the regulation requirement, his staff would examine the school districts' budgets during their postgrant reviews. He said that all expenditures would be examined to verify that the grant funds were being used for authorized purposes.

## ADEQUACY OF PROCEDURES FOR EVALUATION OF PROJECT EFFECTIVENESS

We believe that, of the seven applications included in our review, six did not contain, contrary to the regulations, adequate descriptions of the methods, procedures, or objective criteria which could be used by an independent organization to evaluate the effectiveness of each program activity.

We found that, for several of the activities, the applicants had shown goals or desired achievement rather than methods or objective criteria which could be used to measure the success of the activity.

For example, an application in the amount of $36,800 was approved for special pupil personnel services in Dinwiddie County, Virginia. With respect to evaluation procedures, the application indicated that changes in student attitudes should occur and would be observed by the guidance department, but it did not indicate how the changes were to be measured.

Regional officials told us that many of the applicants did not have the necessary staff and time to enable them to provide adequate descriptions of the methods, procedures, and objective criteria to be used to evaluate the effects of their projects. They said that steps were being taken by the Office of Education and by State educational agencies to provide assistance to the school districts in this regard.

## TRANSFER OF PROPERTY TO NONPUBLIC SEGREGATED SCHOOLS

The seven applications included in our review all contained, as required by the regulations, signed assurances that the applicants had not engaged, and would not engage, in the transfer of property or services to any nonpublic school or school system which practices discrimination.

With respect to the detection of possible violations, we were informed by the Chief of the Education Division, Regional Office for Civil Rights, that his staff relied on information received from informants and complaints from civil rights groups. He said that he was not aware of any such property transfers and that no applications had been rejected or terminated on such grounds. We did not find any record of complaints in the regional files.

## TEACHER AND STAFF ASSIGNMENT AND EMPLOYMENT OF CONSULTANTS

### Assignment of teachers and staff

All seven applications contained, as required by the regulations, signed assurances that teachers and other staff members who worked directly with children at a school would be assigned in a manner that would result in a ratio of minority to nonminority teachers and other staff in each school that was substantially the same as the ratio for the entire school system.

The Chief of the Education Division, Regional Office for Civil Rights, told us that no verification of compliance with the assurances, other than a research of the files, had been made prior to the project approval. He said that compliance would be determined by his staff during their post-grant reviews at the school districts.

### Disparity in the ratio of minority to nonminority faculty in certain schools

We noted that in July 1970 the superintendent of Prince Georges County Schools (Maryland) provided to the Regional Office for Civil Rights data concerning the anticipated composition of the faculty at all the schools within the school district for the 1970-71 school year. The data showed that the ratio of minority to nonminority faculty in each school within the district was not substantially the same as the ratio for the entire school system, contrary to the regulations. The following examples show the disparity between the ratio of minority to nonminority faculty in certain schools in the district and the ratio for the entire school district, which was 15 percent minority to 85 percent nonminority.

| School | Number of faculty | | Ratio of minority to nonminority faculty | |
|---|---|---|---|---|
| | Minority | Nonminority | Minority | Nonminority |
| | | | (percent) | |
| Senior high: | | | | |
| Central | 18 | 52 | 26 | 74 |
| Crossland | 3 | 140 | 3 | 97 |
| Fairmont Heights | 26 | 41 | 39 | 61 |
| High Point | 3 | 128 | 2 | 98 |
| Northwestern | 5 | 116 | 4 | 96 |
| Junior high: | | | | |
| Bladensburg | 1 | 52 | 2 | 98 |
| Kent | 31 | 30 | 51 | 49 |
| Laurel | 1 | 47 | 2 | 98 |
| Mary Bethune | 38 | 18 | 68 | 32 |
| Elementary: | | | | |
| Allenwood | - | 21 | - | 100 |
| Beaver Heights | 20 | 6 | 77 | 23 |
| Berwyn Heights | - | 26 | - | 100 |
| Bond Mill | - | 33 | - | 100 |
| Cherokee Lane | - | 30 | - | 100 |
| Glenarden Woods | 25 | 2 | 93 | 7 |

Since this data was received by the Philadelphia Regional Office on August 6, 1970, before the Prince Georges County project application was approved on September 18, 1970, we asked the Chief of the Education Division why the project had been approved in the face of the apparent noncompliance with the assurance given in its application that the ratio of minority to nonminority faculty in each school would be substantially the same as the ratio for the entire school system. This official stated that it was an oversight on his part and that he should have contacted school district officials to determine what action was being taken to comply with the regulation requirement before approving the district's application.

During our review of the project files, we noted that a visit was made to the Prince Georges County Schools by regional officials during the period October 19 to 21, 1970, approximately 1 month after the project was approved. With respect to faculty desegregation, the report contained a statement that 23 of the 169 elementary schools had all-white faculties and that several schools had predominately black faculties.

Regional Office for Civil Rights officials told us that two subsequent visits were made to Prince Georges County in an attempt to rectify the problem relating to the desegregation of faculty. On February 2, 1971, the Regional Director, Office for Civil Rights, sent a letter to the superintendent of Prince Georges County Schools stating that measures should be undertaken at once to abide by the assurance given in the district's ESAP application.

Employment of consultants

None of the seven applications contained details concerning the qualifications of consultants or other personnel who were to be employed for project activities requiring personnel with special expertise.

For example, with respect to the Harrisburg application, the only mention of consultants was in the detailed budget which showed that $1,500 had been budgeted for the employment of consultants at $75 a day and expenses. The program officer said that, although the specific responsibilities of consultants were not described in the project application, he knew which project activities required the use of consulting services as a result of his personal contact with school district personnel. With respect to the amount budgeted for consultants, the senior program officer told us that, when the project officers visit the school districts, they would carefully review the vouchers supporting payments to consultants.

SEGREGATED CLASSES

The applications of all seven school districts contained signed assurances, as required by the regulations, that no discriminatory practices or procedures, including testing, would be employed in the assignment of children to classes or in carrying out curricular or extracurricular activities within the schools.

We were informed by the Chief of the Education Division, Regional Office of Civil Rights, that his staff had reviewed the files pertaining to the school districts and had relied on the assurances contained in the project applications in approving grants. He stated that no pregrant reviews had been made of any of the school districts. He told us, however, that Regional Office for Civil Rights personnel had visited Prince Georges County.

The report on this visit indicates that regional officials questioned the number of transfers by white students from certain desegregated schools to other schools with a lesser proportion of minority students that had taken place after the desegregation plan was implemented. Information contained in HEW files showed that, prior to the visit by Office for Civil Rights personnel, a moratorium had been placed on such transfers by the school district and that action had been taken to develop an acceptable policy with regard to student transfers. We were informed that this situation was being closely monitored by the Office for Civil Rights.

## ESTABLISHMENT OF ADVISORY COMMITTEES

### Biracial advisory committees

Information in the HEW project files showed that five of the seven school districts included in our review had biracial advisory committees which were in compliance with the provisions of Federal court orders or the regulations.

The biracial committee for the Harrisburg City School District did not meet the regulation requirements that the committee membership be comprised of 50 percent minority and 50 percent nonminority members. The committee was composed of 11 white and eight black members. The regional office files indicated that the other school district, Prince Georges County (Maryland) had not established a biracial advisory committee. Regional officials told us that they had been in contact with the school districts in an effort to resolve these problems in these two school districts.

### Student advisory committees

Five of the seven school districts were required to form student advisory committees in the secondary schools affected by the projects and gave assurances that the committees would be formed. Our review showed that two of the districts had complied with the regulation requirements in this regard and that one had formed a student advisory committee, which did not meet the requirement of the regulations that the committee be comprised of an equal number of minority and nonminority students. At the time of our review, there was no information in the files to indicate that the committees had been formed for the other two districts. Regional officials told us that they would follow up on the compliance with this requirement of the ESAP regulations in these three school districts.

## PUBLICATION OF PROJECT TERMS

All seven applicants submitted signed assurances, as required by the regulations, that the terms and provisions of their projects would be published within 30 days after project approval.

Our review of the project files showed that two of the districts had published the required data. The Chief of the Education Division, Regional Office for Civil Rights, told us that the school districts were required to maintain evidence of publication in their files but were not required to submit such evidence to the regional office. He told us also that evidence of publication would be obtained during postgrant reviews in the school districts.

## CHAPTER 7

## COMMENTS ON HEW SAN FRANCISCO REGIONAL OFFICE PROCEDURES FOR APPROVING GRANTS UNDER ESAP

HEW Region IX, with headquarters in San Francisco, California, encompasses the four States of Arizona, California, Hawaii, and Nevada. According to Office of Education statistics, 1,394 school districts were operating public schools in these States in the fall of 1969. As of August 26, 1970, eight school districts were identified by HEW as potentially eligible for assistance under ESAP. Of these eight school districts, two--Pasadena and Inglewood, California--received grants totaling about $190,000. Our review included both of these grants. (See app. III.)

On October 6, 1970, Pasadena applied for $125,000 and on December 7, 1970, received a grant totaling $115,000--$95,800 for special curriculum revision (principally to hire 21 teacher-aides), $12,800 for special community programs, and $6,400 for special pupil personnel services.

On October 22, 1970, Inglewood applied for $126,000 and on December 14, 1970, received a grant totaling $74,938--$71,771 for special pupil personnel services and $3,167 for special curriculum programs.

We believe that the procedures used in Region IX to evaluate the Pasadena and Inglewood applications provided enough information for HEW to determine that the proposed program activities met the requirements of the regulations. Before the school districts had determined their desegregation needs and developed proposed programs to solve those needs, however, Region IX officials established funding ranges within which grants to potentially eligible school districts would be made. Information on the funding ranges was communicated to the Pasadena School District and to other school districts subsequently determined to be ineligible.

We believe that a procedure under which school districts are informed in advance of the amounts that can be made available to them under ESAP could tend, in some instances, to bring about inflated requests for funds and, in other instances, unrealistically low estimates of financial needs to overcome major problems arising from school desegregation.

The applications of Pasadena and Inglewood did not contain, contrary to the regulations, assurances that student advisory committees would be formed in each secondary school affected by the project. Although both applications contained references to biracial advisory committees, they were not complete with respect to when the committees would become operational or what community organizations would be represented on the committees.

In our opinion, neither application contained, contrary to the regulations, an adequate description of the methods, procedures, and objective criteria that could be used by an independent organization to evaluate the effectiveness of each program activity.

We did not note any information in the regional files which would lead us to believe that either school district (1) had transferred any property or services to a nonpublic school which practiced racial discrimination, (2) was discriminating on the basis of race in teacher and professional staffing patterns, (3) was assigning children to classes on the basis of their being members of minority groups, or (4) would use its ESAP grant to supplant non-Federal funds available to it for the purposes of ESAP.

## ELIGIBILITY AND FUNDING OF SCHOOL DISTRICTS

Region IX used several sources, primarily State departments of education, to determine which school districts had implemented desegregation plans and then submitted to HEW/Washington the names of eight districts whose plans they had determined were in the terminal phase. The Division of Equal Educational Opportunities in Washington then requested each of these districts to submit a copy of its desegregation plans to HEW/Washington for review and final determination of its eligibility. On the basis of the 25,903 minority students in these eight districts, all of which were in California, the Office of Education, through use of the formula previously described on page 7, allotted $482,944 to Region IX on August 26, 1970.

While the final eligibility of the eight districts was being considered by HEW/Washington, the names of 14 additional potentially eligible districts were submitted to Region IX by the California State Department of Education. Seven of these districts sent their desegregation plans to HEW/Washington early in September 1970.

On September 18, 1970, a meeting of school superintendents from potentially eligible school districts was held in San Francisco to discuss the purposes and requirements of ESAP. On September 21, 1970, 3 days later, HEW regional officials held a meeting at Riverside, California, with school district representatives to explain the application procedures. Prior to this meeting, regional officials were informed that three of the 15 districts whose desegregation plans had been sent to Washington were not interested in submitting proposals for ESAP funds. At the time of this meeting, a final determination on the eligibility of the remaining 12 districts had not been received from Washington.

On October 6, 1970, HEW's Office of General Counsel notified Region IX that only two of the 15 districts--Pasadena and Inglewood--were eligible for financial assistance under ESAP. This determination was based on a decision that Pasadena and Inglewood were the only districts in Region IX under court order to desegregate.

Our review showed that an allocation of available funds--$482,944--was made among the 12 school districts in Region IX which the regional staff had concluded were potentially eligible for ESAP and were interested in receiving funds. According to regional officials, the method used to make this allocation was based on the number of minority children in each district times $10 plus a flat amount of $10,000. The resulting amount became the basis for establishing a funding range within which grants to the school districts would be made. The upper limits of the range were established by adding about 10 percent to the amount, and the lower limits were established by subtracting about 10 percent from the amount.

According to Region IX officials, these funding ranges were established on their own initiative as an administrative tool designed to ensure that available funds would not be exhausted before all eligible districts had an opportunity to participate. The officials said that some districts had problems of such magnitude that they could possibly submit a proposal requesting an amount which would equal or exceed the total funds available to the States.

At the previously mentioned meeting on September 21, 1970, representatives of potentially eligible districts were informed by HEW regional officials of the funding ranges established for their districts before they had developed proposed programs to help solve their desegregation problems.

A representative of the Pasadena School District attended this meeting and was advised that the school district's funding range was established at $110,000 to $120,000. On October 6, 1970, Pasadena submitted an ESAP project proposal requesting $125,000. We noted that, in the review of the proposal by regional officials, one program activity, for which $10,000 was requested, had been deleted from the proposal because the program officer believed that it was not related to desegregation and that it would have supplanted the district's own funds. Consequently, a grant of $115,000 was approved.

The Inglewood district, which did not have a representative at the September 21, 1970, meeting, submitted a project proposal requesting $126,000, which substantially exceeded the funding range established for this district of $35,000 to $45,000. Regional officials told us that they had informed Inglewood that it had to reduce its request to about $75,000 because the number of minority students in the Inglewood School District in relation to the number of students in Pasadena did not justify the amount requested.

By letter dated January 23, 1971, the senior program officer, Office of Education, Region IX, furnished us with an explanation of how the $74,938--the amount of the grant made to Inglewood--had been developed. He stated that, during the initial review of the Inglewood application, a proposed activity for community publications--budgeted for about $8,000--was questioned as not being related to a problem resulting from desegregation. He stated also that the hiring of new staff under the proposal would take at least 2 months and that therefore the proposal could be reduced in this area--about $40,000 for salaries and related employee benefits--without changing the scope of the program. In addition, other reductions totaling about $3,000 were made. On this basis, regional officials concluded that Inglewood could reduce its request for funds without hurting the program but that it should not be held to the maximum of its established funding range of $45,000 because its minimum program needs would require about $75,000. Inglewood then submitted a revised application requesting $74,938.

Regional officials told us that, in the future, districts would not be given funding ranges in advance but would be asked to submit proposals using three assumptions regarding possible levels of funding, as follows:

1. Unlimited funding is available; therefore the full program should be presented.

2. Funds are limited; therefore program activities should be ranked in order of priority.

3. Funds are extremely limited; therefore one bare-bones activity of highest priority should be identified.

## PROJECT POTENTIAL AND CONTENT

Our review of the applications of both the Pasadena and the Inglewood School Districts revealed that they had identified problems which appeared to be related to desegregation and proposed program activities designed to meet these problems. It appeared that the need for regional consideration of project priorities between school districts had lessened, since only two applications were received.

Regional officials told us that meetings and visits had been held with school district personnel to obtain explanations on certain proposed activities prior to project approval. They said that some of the proposed program activities were not approved because the activities were not considered to be related to a problem resulting from desegregation. (See p. 65.) Regional officials told us that, during their first monitoring visit, the program officers would obtain detailed explanations of how the activities were being conducted.

## SUPPLEMENTING AND SUPPLANTING OF FUNDS

Regional officials told us that they had relied upon the assurance statements, signed by the school district officials, in their applications that ESAP funds would be used only to supplement, not to supplant, non-Federal funds which were available to them for program purposes. Regional officials told us also that, during their postgrant monitoring of the projects, they would determine whether the school districts were complying with this assurance.

Pasadena's application showed an increase in the amount of non-Federal funds available after implementation of its desegregation plan, whereas Inglewood's application showed a decrease, which was attributed to a decline in student enrollment.

## ADEQUACY OF PROCEDURES FOR EVALUATION OF PROJECT EFFECTIVENESS

We believe that neither application contained, contrary to the regulations, an adequate description of the methods, procedures, and objective criteria that could be used by an independent organization to evaluate the effectiveness of each program activity.

The Pasadena application presented evaluation procedures, methods, and criteria in only summary outline form. The methods outlined were extremely generalized for some program activities and were not specific enough to measure the effectiveness of such activities.

The evaluation procedures and criteria presented in the Inglewood application were also inadequate. For example, for one program activity, Inglewood stated merely that consultants would be engaged to review this activity, but there was no description of the evaluation procedures to be followed. Region IX officials told us that the evaluation requirement had caused considerable confusion among the school districts and that Inglewood would be required to revise the evaluation section of its application.

## TRANSFER OF PROPERTY TO NONPUBLIC SEGREGATED SCHOOLS

Neither Inglewood nor Pasadena listed any property or services in its application as being transferred to a nonpublic school or school system, and the school district superintendents certified that no such transfers had been made.

Office for Civil Rights regional officials told us that they had visited the Pasadena School District in connection with other programs and that, in gaining knowledge of the district's policies, were confident that the district would not support a segregated school. A similar visit had not been made to the Inglewood School District. It was the view of the Office for Civil Rights officials that any transfers of property to support segregated schools would very likely be the subject of a citizen's complaint. We found no record of such complaints in the regional files.

## TEACHER AND STAFF ASSIGNMENT

Regional officials accepted, without verification, the assurances in the Inglewood and Pasadena applications that the districts were in compliance with HEW regulations concerning nondiscrimination in teacher and professional staffing patterns.

The Pasadena desegregation plan, submitted with the application, stated that the district had at that time a full complement of teachers and administrators. It also pointed out that, even though teachers from minority groups were in short supply, efforts would be made to hire more minority professional people as positions became available. A detailed recruitment plan showed that Pasadena intended to contact colleges throughout the Nation in its efforts to hire more teachers from minority groups. The Inglewood application and desegregation plan made no reference to future minority staffing patterns.

Office for Civil Rights regional officials told us that they would place reliance on monitoring of the projects to determine whether the districts were violating the assurances regarding discrimination in teacher and professional staffing patterns. These officials told us also that they had received no such complaints from minority teachers regarding racial discrimination practices in the two districts, and we found no record of such complaints in our review of the files.

## SEGREGATED CLASSES

Both applications contained signed assurances, as required by the regulations, that no discriminatory practices or procedures, including testing, would be employed in assigning children to classes or in carrying out curricular and extracurricular activities within the schools.

Office for Civil Rights regional officials told us that they had not taken any specific action to verify the school districts' assurances but had relied on their background knowledge of possible civil rights violations and on complaints that might be received from people in the district that children were being assigned to segregated classes. We did not find any record of such complaints in the files.

## ESTABLISHMENT OF ADVISORY COMMITTEES

### Biracial advisory committees

The applications of both Inglewood and Pasadena contained references to biracial committees, but they were not complete in some respects.

The Inglewood application stated that a study group in the district had recommended the formation of an advisory committee, with 50 percent of its members being from minority groups. The application, however, did not stipulate when the committee would become operational and did not name the community organizations that would be represented on the committee.

The Pasadena application indicated that the district planned to use, as its biracial committee, a group which had been formed in the prior school year to review some of its own programs, as well as federally funded programs, supplemented by representatives from other unidentified organizations. We were told by a regional official, however, that the district's plans to reorganize this committee had been abandoned because information received on its past performance indicated room for improvement. A desire for a more effective biracial committee resulted in an agreement between the school district and HEW that a new committee would be formed within 30 days after grant approval.

The Inglewood and Pasadena School Districts had until January 7 and January 14, 1971, respectively, to form their advisory committees. As of January 19, 1971, Region IX had not received notification from either grantee that such a committee had been established. At our request, regional officials contacted each school district and were told that each district was in the process of establishing its biracial advisory committee.

### Student advisory committees

In processing the applications of both Inglewood and Pasadena, Region IX officials did not obtain written assurances, contrary to the regulations, that a student advisory committee composed of minority and nonminority group children would be formed in each secondary school affected by the project.

The senior program officer told us that both districts understood that student advisory committees were required and that both planned to form such committees. He said that the districts had not mentioned the student committees in their applications because they did not plan to use ESAP funds to provide support for such committees. Region IX officials agreed, however, that they should have required that the assurances be submitted and said that action would be taken to obtain them.

## PUBLICATION OF PROJECT TERMS

The applications submitted by both school districts contained, as required by the regulations, signed assurances that the terms and provisions of the projects would be published in local newspapers within 30 days after project approval. As a result of our inquiry as to whether the districts had complied with this requirement, a regional official contacted district officials and learned that, although each district had published an article concerning its grant, the article on the Pasadena grant did not state the terms and provisions of the grant, contrary to the regulations. The officials told us that Pasadena had agreed to have another article published.

## CHAPTER 8

## COMMENTS ON HEW KANSAS CITY REGIONAL OFFICE PROCEDURES FOR APPROVING GRANTS UNDER ESAP

HEW Region VII, with headquarters in Kansas City, Missouri, encompasses the four States of Iowa, Kansas, Missouri, and Nebraska. According to Office of Education statistics, 2,835 school districts were operating public schools in these States in the fall of 1969. As of August 26, 1970, 14 school districts, all in Missouri, were identified by HEW as being potentially eligible for assistance under ESAP.

Three of the 14 school districts applied for grants under the program but only one--New Madrid County R-1 Enlarged School District, New Madrid, Missouri--was determined eligible by HEW and received a grant as of November 13, 1970. Our review included this grant. (See app. III.)

On September 24, 1970, New Madrid school district applied for $92,651 and, on October 22, 1970, received a grant totaling $57,385--$21,770 for special community programs and $35,615 for special pupil personnel services.

We believe that the procedures used in Region VII for evaluating the New Madrid application provided enough information for HEW to determine that the proposed program activities met the requirements of the regulations.

We believe that the applicant's statement of the problems faced in desegregating the school district was, in general, descriptive enough for the program officer to evaluate the district's need for assistance and the relative potential of the project. The program officer, however, told us that, to determine the priority of needs of program activities set forth in the application, he had relied on his past educational experience and judgment. The program officer told us also that he had obtained supplemental information from school district officials. This information, however, was not documented in the files.

The program officer obtained the assurances required by HEW regulations and, in some instances, performed additional work prior to approval of the application to ensure that the applicant had complied with the regulations. Generally the supplemental information obtained was not documented in the files.

### ELIGIBILITY AND FUNDING OF SCHOOL DISTRICTS

In August 1970, the Division of Equal Educational Opportunities, Office of Education, Washington, verbally requested the Region VII program officer to obtain a listing of potentially eligible school districts within the four States in that region so that ESAP funds could be allocated to these States. According to the program officer, information on the potentially eligible school districts was obtained at State departments of education in the four States, because these were the only known central sources in the region where information on court orders and desegregation plans submitted by districts in the States was available.

HEW determined that Missouri was the only State in the region with school districts that were potentially eligible for ESAP funds. Late in August 1970, 14 districts were reported to HEW/Washington as being potentially eligible for assistance under ESAP. On the basis of the 7,269 minority children in all 14 districts, the Office of Education, through use of the formula previously described on page 7, allotted $135,526 to Missouri on August 26, 1970, although most of the 14 districts were later determined to be ineligible for, or were not interested in applying for, ESAP funds.

On September 1, 1970, the 14 potentially eligible school districts were requested to submit copies of their desegregation plans and related information to HEW/Washington for final determination of each district's eligibility. Four Missouri districts responded to the request.

On September 16, 1970, an official from the Division of Equal Educational Opportunities in Washington, the Region VII program officer, and a Missouri department of education official held an informational meeting with representatives of nine of Missouri's 14 potentially eligible school districts to inform them of assistance available under ESAP. The program officer told us that the other five districts had withdrawn prior to the meeting and that, as a result of the meeting, five more districts had withdrawn because they either were not interested or did not consider themselves eligible. The remaining four districts had submitted copies of their desegregation plans to HEW/Washington for review.

On September 24 and 25, 1970, Division of Equal Educational Opportunities officials held workshops to explain the application procedures, and they invited the four remaining Missouri school districts to attend. Three of the four districts attended and later submitted applications. The program officer told us that the superintendent of the fourth district had informed him that the district did not want to apply for ESAP funds at that time.

The program officer told us also that funds had not been allocated to the districts nor had any funds been reserved for a specific district. He said that he did not review the applications with any predetermined amount of funds per district in mind and that he had no requirement to spend all the money allocated to Missouri. He expressed his opinion that, if one applicant had the greatest need and required all the State's allocation, he would recommend giving all the funds to this applicant in lieu of giving part of the funds to applicants with lesser needs.

The program officer received the three applications on October 2, 1970, and took them to Washington on October 4, 1970, where he and three Division of Equal Educational Opportunities officials reviewed them. The three applicants requested a total of about $250,700 compared with Missouri's allocation of $135,526, but a grant of only $132,690 was approved pending final determination of eligibility. The program officer told us that the applications had been reviewed on the assumption that all three districts were eligible.

On October 6, 1970, HEW's Office of General Counsel informed the Division of Equal Educational Opportunities that only New Madrid was eligible for a grant. The other two school districts were determined to be ineligible, because they had not entered the terminal phase of their desegregation plan during the time period specified by the regulations. The amount of funds approved for New Madrid on October 22, 1970, was not changed after it became the only eligible district--$92,651 was originally requested and $57,385 was granted.

## PROJECT POTENTIAL AND CONTENT

We reviewed the New Madrid application and found that it had identified two problem areas--a breakdown in parent-community school communication and severe educational deficits of some of the children--and proposed program activities designed to meet these problems.

In our opinion, the proposed activities were authorized by the regulations and seemed to be related to the problems discussed in the application. Also the application identified objectives and achievements anticipated and specified qualifications of officials needed to carry out the activities. The budget breakdown corresponded with the program activities and further specified the officials to be involved and the extent and type of costs to be incurred in accomplishing the activities.

The program officer, however, told us that, to determine the priority of needs of program activities set forth in the application, he had relied on his educational experience and judgment. He said that, in reviewing the three applications received, he had considered program activities which stressed personnel services oriented to the needs of the children involved in desegregation as being of the highest priority and that, in his opinion, project items for hardware or facility items (capital expenditures) were difficult to justify. Consequently, he eliminated certain hardware or facility items from the applications, although they were allowable under the regulations.

For example, a mobile reading-clinic unit and related equipment and staff were eliminated from the New Madrid application, because the program officer did not believe that the need for the mobile clinic resulted from desegregation or that, based on the current thinking of educators, its use was a good approach to learning.

## SUPPLEMENTING AND SUPPLANTING OF FUNDS

The application contained assurances, as required by HEW regulations, that the ESAP funds made available would be used only to supplement and increase the level of funds available to the applicant from non-Federal sources. In addition to reviewing the assurance statement, the program officer told us that he had reviewed the school district's school-year budgets for 1968-69, 1969-70, and 1970-71 to ensure that the budgets had not decreased after desegregation. The program officer said that the district's non-Federal funds had increased after desegregation. We noted no documentation in the project file, however, to verify the program officer's review.

The program officer said that in Missouri a school district's budget is prepared and approved by voters in the spring preceding the fall school year. Consequently, he said that the applicant's budget (level of non-Federal funds) was set prior to knowledge of the program.

## ADEQUACY OF PROCEDURES FOR EVALUATION OF PROJECT EFFECTIVENESS

The key program activities listed in the application were special community programs for promoting understanding among students, teachers, parents, and community groups and in-service training for teachers to enable them to detect severe reading disabilities and to provide remediation to the students.

The application set forth the district's intended methods and procedures for evaluating the effects of these program activities. The success of liaison activity to promote better understanding between the community and the school was to be judged by how well the activity worked in decreasing antagonism toward the school's educational process, lessening racial conflicts, and increasing cooperation between the community and the school system. Pretesting and posttesting of elementary students was to be used to determine the success of the remedial reading activity, along with a comparison of academic records and an evaluation of behavioral and personality changes by the employees who had contact with the students.

The program officer believed that the success of the activities could be evaluated by an independent evaluator.

## TRANSFER OF PROPERTY TO NONPUBLIC SEGREGATED SCHOOLS

The New Madrid application did not list any property or services transferred to a nonpublic school or school system, and the school district superintendent certified that no such transfers had been made.

The program officer told us that he had reviewed the files in the Missouri department of education to determine whether any new private schools had been established in the New Madrid school district in recent years. He found that there were no large nonpublic schools and that, in fact, there were only a very few parochial schools in the district. The program officer also stated that he had checked student enrollment before and after desegregation and found that it had not dropped.

## TEACHER AND STAFF ASSIGNMENT AND EMPLOYMENT OF CONSULTANTS

Other than obtaining the applicant's assurance, as required by the regulations, HEW obtained little additional information prior to approval of the application as to whether the district was in compliance with the regulations concerning discrimination in teacher and professional staffing patterns. Also we believe that the application provided sufficient detail whereby the program officer could verify the qualifications of the personnel requested to conduct the proposed activities.

The program officer told us that he had relied on the applicant's assurance that the school district was in compliance and that he had planned to make an onsite visit to verify this assurance.

Before approval of the application, Office for Civil Rights investigators had visited five schools in the New Madrid district and inquired into areas of minority-teacher assignment to classes with predominately white students, student-testing practices, and integration of teachers from the all-black schools into the school system. The investigators concluded that there was no clear evidence in the district of noncompliance with the nondiscrimination requirements of title VI of the Civil Rights Act of 1964.

With respect to staff's being hired under the program, the application stated, for example, that two reading specialists would be hired to conduct the project's special pupil personnel services activity. Although the application did not show the specific qualifications these individuals were to possess, the program officer contended that showing these qualifications was not necessary because qualifications are governed by State standards. The program officer said that the school district superintendent had assured him that individuals having the required qualifications could be obtained and that he would verify the qualifications during his onsite visit.

## SEGREGATED CLASSES

The application contained signed assurances from the school district, as required by the regulations, that no discriminatory practices or procedures, including testing, would be employed in assigning children to classes or in carrying out curricular or extracurricular activities within the schools.

The regional file on the New Madrid project contained a copy of a report on an Office for Civil Rights onsite visit made to five schools in New Madrid prior to project approval. The report showed that the district had implemented a desegregation plan, that it was in the terminal phase of desegregation, and that the schools in the district were completely desegregated. The report also indicated that there were no all-black schools and that the investigators had been advised that the district's buses; school organizations; and athletic, social, and extracurricular activities within the schools were completely desegregated.

The program officer told us that, prior to approval of the application, an official of the Division of Equal Educational Opportunities in Washington informed him verbally that the Office for Civil Rights had cleared the application. However, a form indicating Office for Civil Rights review and clearance had not been submitted to the regional office. The responsible Office for Civil Rights official told us that New Madrid was determined to be in compliance with this assurance but that, through an oversight, the clearance form had not been prepared. After we discussed this matter with the official, the form was prepared and made a part of the record.

## ESTABLISHMENT OF ADVISORY COMMITTEES

### Biracial advisory committee

The application stated that the school district had a biracial advisory committee prior to submission of the application. The composition of the committee appeared to meet the requirements of the regulations.

The committee was composed of 10 members, five black and five white. The application included a statement that the committee members were parents or grandparents of children attending schools affected by the projects. The regulations require that at least 50 percent of the committee members be parents. The program officer told us that the school district superintendent had assured him that all the committee members were either parents or guardians of children attending schools affected by the projects, although the application file was not documented to support his statement.

The application indicated that the biracial advisory committee was in existence when the application was signed by the school district superintendent on September 24, 1970. A statement in the project file, signed by the chairman of the committee on September 28, 1970, indicated that the committee had endorsed the proposed project.

The program officer told us that the committee probably had been formed under title I of the Elementary and Secondary Education Act or Office of Economic Opportunity programs and that he believed that the committee had satisfied HEW regulations.

Student advisory committee

No student advisory committee was established, because the proposed program did not apply directly to secondary schools.

## PUBLICATION OF PROJECT TERMS

The application submitted by the school district contained, as required by the regulations, a signed assurance that the terms and provisions of the project would be published in a local newspaper within 30 days after project approval.

During our review the program officer contacted the school district superintendent and was informed that the published articles were on file. The program officer, however, did not know whether the articles had been published within 30 days after grant approval.

## CHAPTER 9

## SCOPE OF REVIEW

We reviewed the legislative history of the Emergency School Assistance Program, the related Federal regulations, and the program policies and procedures of the Office of Education and the Office for Civil Rights, HEW. In addition, we reviewed project applications and other pertinent documents for 50 grants reported by the Office of Education as having been approved through November 13, 1970. We also interviewed HEW personnel having responsibilities under the program in the HEW headquarters in Washington and in five HEW regional offices.

Our work was concerned primarily with a review of HEW policies and procedures for approving grants under ESAP and was conducted at the HEW headquarters in Washington and at the HEW regional offices in Atlanta, Dallas, Kansas City, Philadelphia, and San Francisco. We did not perform any work at the school districts. Examination of the expenditures of the school districts relating to these grants is to be made in a follow-on review.

### STATISTICS RELATING TO PARTICIPATION IN EMERGENCY SCHOOL ASSISTANCE PROGRAM IN HEW REGIONS INCLUDED IN GAO'S REVIEW

| HEW region--State | Number of public school districts: Within the State (note a) | Number of public school districts: Potentially eligible (note b) | Number of public school districts: Provided technical assistance by HEW (note c) | Status of applications for financial assistance submitted by school districts as of November 13, 1970: Received | Status of applications for financial assistance submitted by school districts as of November 13, 1970: Approved | Status of applications for financial assistance submitted by school districts as of November 13, 1970: Rejected | Status of applications for financial assistance submitted by school districts as of November 13, 1970: Under review |
|---|---|---|---|---|---|---|---|
| REGION III--PHILADELPHIA: | | | | | | | |
| Delaware | 26 | - | - | - | - | - | - |
| District of Columbia | 1 | - | - | - | - | - | - |
| Maryland | 24 | 6 | 6 | 5 | 2 | 1 | 2 |
| Pennsylvania | 600 | 11 | 11 | 10 | 9 | 1 | - |
| Virginia | 134 | 71 | 69 | 55 | 48 | 1 | 6 |
| West Virginia | 55 | 1 | 3 | 2 | - | - | 2 |
| Total | 840 | 89 | 89 | 72 | 59 | 3 | 10 |
| REGION IV--ATLANTA: | | | | | | | |
| Alabama | 118 | 110 | 112 | 80 | 57 | 2 | 21 |
| Florida | 67 | 64 | 58 | 58 | 57 | - | 1 |
| Georgia | 190 | 168 | 168 | 157 | 144 | - | 13 |
| Kentucky | 193 | 7 | 7 | 5 | 4 | - | 1 |
| Mississippi | 148 | 149 | 149 | 100 | 86 | - | 14 |
| North Carolina | 152 | 125 | 124 | 91 | 81 | - | 10 |
| South Carolina | 93 | 92 | 93 | 70 | 64 | - | 6 |
| Tennessee | 149 | 58 | 59 | 46 | 37 | - | 9 |
| Total | 1,110 | 773 | 770 | 607 | 530 | 2 | 75 |
| REGION VI--DALLAS-FORT WORTH: | | | | | | | |
| Arkansas | 384 | 126 | 121 | 78 | 69 | 1 | 8 |
| Louisiana | 66 | 65 | 59 | 44 | 36 | - | 8 |
| New Mexico | 89 | - | - | - | - | - | - |
| Oklahoma | 685 | 22 | 18 | 15 | 9 | 5 | 1 |
| Texas | 1,208 | 174 | 138 | 106 | 86 | 5 | 15 |
| Total | 2,432 | 387 | 336 | 243 | 200 | 11 | 32 |
| REGION VII--KANSAS CITY: | | | | | | | |
| Iowa | 453 | - | - | - | - | - | - |
| Kansas | 311 | - | - | - | - | - | - |
| Missouri | 651 | 14 | 7 | 3 | 1 | 2 | - |
| Nebraska | 1,420 | - | - | - | - | - | - |
| Total | 2,835 | 14 | 7 | 3 | 1 | 2 | - |
| REGION IX--SAN FRANCISCO: | | | | | | | |
| Arizona | 294 | - | - | - | - | - | - |
| California | 1,082 | 8 | 8 | 2 | 2[d] | - | - |
| Hawaii | 1 | - | - | - | - | - | - |
| Nevada | 17 | - | - | - | - | - | - |
| Total | 1,394 | 8 | 8 | 2 | 2 | - | - |
| TOTAL | 8,611 | 1,271 | 1,210 | 927 | 792 | 18 | 117 |

[a] Based on Office of Education statistics in the fall of 1969.

[b] Identified by HEW as potentially eligible as of August 26, 1970.

[c] According to HEW--in some States, school districts other than those identified as being potentially eligible as of August 26, 1970, were provided with information about ESAP and with assistance in preparing project applications.

[d] Reported by the Office of Education as having been approved as of November 13, 1970; applications actually approved in December 1970.

APPENDIX II
Page 1

## BREAKDOWN BY STATE
## OF NUMBER AND AMOUNT OF GRANTS MADE UNDER
## THE EMERGENCY SCHOOL ASSISTANCE PROGRAM
## AS OF NOVEMBER 13, 1970

| HEW region and State | Grants made<br>Number | <br>Amount |
|---|---|---|
| REGION I--BOSTON: | | |
| Connecticut | - | $ - |
| Maine | - | - |
| Massachusetts | - | - |
| New Hampshire | - | - |
| Rhode Island | - | - |
| Vermont | - | - |
| Total | - | - |
| REGION II--NEW YORK: | | |
| New York | - | - |
| New Jersey | - | - |
| Puerto Rico | - | - |
| Virgin Islands | 1 | 45,000 |
| Total | 1 | 45,000 |
| REGION III--PHILADELPHIA: | | |
| Delaware | - | - |
| District of Columbia | - | - |
| Maryland | 2 | 653,363 |
| Pennsylvania | 9 | 349,892 |
| Virginia | 48 | 3,692,998 |
| West Virginia | - | - |
| Total | 59 | 4,696,253 |
| REGION IV--ATLANTA: | | |
| Alabama | 57 | 4,143,047 |
| Florida | 57 | 7,126,565 |
| Georgia | 144 | 6,504,464 |
| Kentucky | 4 | 106,257 |
| Mississippi | 86 | 4,740,739 |
| North Carolina | 81 | 6,481,469 |
| South Carolina | 64 | 4,425,449 |
| Tennessee | 37 | 2,666,048 |
| Total | 530 | 36,194,038 |

| HEW region and State | Grants made | |
|---|---|---|
| | Number | Amount |
| REGION V--CHICAGO: | | |
| Illinois | - | $ - |
| Indiana | - | - |
| Minnesota | - | - |
| Michigan | - | - |
| Ohio | - | - |
| Wisconsin | - | - |
| Total | - | - |
| REGION VI--DALLAS-FORT WORTH: | | |
| Arkansas | 69 | 1,698,567 |
| Louisiana | 36 | 5,672,848 |
| New Mexico | - | - |
| Oklahoma | 9 | 265,137 |
| Texas | 86 | 6,688,369 |
| Total | 200 | 14,324,921 |
| REGION VII--KANSAS CITY: | | |
| Iowa | - | - |
| Kansas | - | - |
| Missouri | 1 | 57,385 |
| Nebraska | - | - |
| Total | 1 | 57,385 |
| REGION VIII--DENVER: | | |
| Colorado | - | - |
| Montana | - | - |
| North Dakota | - | - |
| South Dakota | - | - |
| Utah | - | - |
| Wyoming | - | - |
| Total | - | - |
| REGION IX--SAN FRANCISCO: | | |
| Arizona | - | - |
| California | 2[a] | 189,938 |
| Hawaii | - | - |
| Nevada | - | - |
| Total | 2 | 189,938 |
| REGION X--SEATTLE: | | |
| Alaska | - | - |
| Idaho | - | - |
| Oregon | - | - |
| Washington | - | - |
| Total | - | - |
| TOTAL | 793 | $55,507,535 |

[a] Reported by the Office of Education as having been made through November 13, 1970; grants were actually made in December 1970.

GRANTS UNDER THE

EMERGENCY SCHOOL ASSISTANCE PROGRAM

SELECTED FOR GAO REVIEW

| HEW region, State, and school district | Number of grants selected | How selected--certainty (C) or random (R) | Amount of grant |
|---|---|---|---|
| REGION III--PHILADELPHIA: | | | |
| Maryland: | | | |
| Prince Georges County Schools | | C | $ 532,709 |
| Dorchester County Schools | | C | 120,654 |
| Total | 2 | | 653,363 |
| Pennsylvania: | | | |
| Harrisburg City School District | | R | 50,723 |
| Susquehanna Township School District | | R | 17,100 |
| Total | 2 | | 67,823 |
| Virginia: | | | |
| Norfolk City Schools | | R | 294,025 |
| Dinwiddie County School Board | | R | 56,400 |
| Powhatan County Schools | | R | 32,210 |
| Total | 3 | | 382,635 |
| Total Region III | 7 | | 1,103,821 |
| REGION IV--ATLANTA: | | | |
| Alabama: | | | |
| Talladega County Board of Education | | R | 168,247 |
| Phenix City Board of Education | | R | 74,312 |
| Sylacauga City Board of Education | | R | 27,468 |
| Total | 3 | | 270,027 |
| Florida: | | | |
| Dade County Public Schools | | C | 2,121,905 |
| Madison School Board of Education | | R | 50,000 |
| Wakalla County Schools | | R | 9,000 |
| Total | 3 | | 2,180,905 |
| Georgia: | | | |
| Atlanta Public Schools | | C | 1,150,939 |
| Crisp County School System | | R | 65,925 |
| Appling County Board of Education | | R | 38,313 |
| Carroll County Board of Education | | R | 28,800 |
| Wilkinson County Board of Education | | R | 22,000 |
| Montgomery County Board of Education | | R | 13,000 |
| Bacon County Board of Education | | R | 6,000 |
| Total | 7 | | 1,324,977 |
| Kentucky: | | | |
| Jefferson County Public Schools | | R | 32,700 |
| Fulton County Board of Education | | R | 4,430 |
| Total | 2 | | 37,130 |
| Mississippi: | | | |
| Jackson Municipal Separate School District | | C | 1,300,000 |
| Hinds County Public Schools | | R | 190,000 |
| Harrison County School District | | R | 43,000 |
| Houston Municipal Separate School District | | R | 20,000 |
| Total | 4 | | 1,553,000 |
| North Carolina: | | | |
| Winston-Salem City/Forsyth County Schools | | R | 250,738 |
| Columbus County Schools | | R | 118,900 |
| Hoke County Board of Education | | R | 89,240 |
| Tarboro City Board of Education | | R | 43,832 |
| Total | 4 | | 502,710 |

| HEW region, State, and school district | Number of grants selected | How selected--certainty (C) or random (R) | Amount of grant |
|---|---|---|---|
| REGION IV--ATLANTA (cont.): | | | |
| South Carolina: | | | |
| Greenville School District | | R | $ 359,998 |
| Dillon County School District No. 2 | | R | 75,000 |
| Orangeburg County School District No. 7 | | R | 25,568 |
| Total | 3 | | 460,566 |
| Tennessee: | | | |
| Memphis City Board of Education | | C | 992,531 |
| Maury City Board of Education | | R | 1,500 |
| Total | 2 | | 994,031 |
| Total Region IV | 28 | | 7,323,346 |
| REGION VI--DALLAS-FORT WORTH: | | | |
| Arkansas: | | | |
| Hope School District | | R | 61,400 |
| Luxora School District | | R | 24,000 |
| Watson School District | | R | 11,300 |
| Drew-Central School District | | R | 4,100 |
| Total | 4 | | 100,800 |
| Louisiana: | | | |
| Orleans Parish School District | | C | 1,953,400 |
| Jackson Parish | | R | 42,000 |
| Total | 2 | | 1,995,400 |
| Oklahoma: | | | |
| Ardmore City Schools | | R | 26,000 |
| Checotah Independent School District No. 19 | | R | 8,515 |
| Total | 2 | | 34,515 |
| Texas: | | | |
| Houston Independent School District | | C | 2,025,000 |
| San Antonio Independent School District | | C | 1,165,300 |
| West Orange Cove Consolidated Independent School District | | R | 49,080 |
| Buffalo Independent School District | | R | 14,550 |
| Total | 4 | | 3,253,930 |
| Total Region VI | 12 | | 5,384,645 |
| REGION VII--KANSAS CITY: | | | |
| Missouri: | | | |
| New Madrid School District R-I | | C | 57,385 |
| Total | 1 | | 57,385 |
| Total Region VII | 1 | | 57,385 |
| REGION IX--SAN FRANCISCO: | | | |
| California: | | | |
| Pasadena Unified School District | | C | 115,000 |
| Inglewood Unified School District | | C | 74,938 |
| Total | 2 | | 189,938 |
| Total Reg[illegible] IX | 2 | | 189,938 |
| TOTAL--ALL REGIONS | 50 | | $14,059,135 |

Note: Criteria used in making selections:

1. Grants of $1 million or more were selected--including the grant to Memphis in the amount of $992,531.
2. At least two grants in each State were selected--if the State had received only one or two grants all grants were selected.
3. All other grants were selected at random--within each State the grants were listed from high to low dollar amounts so that a mix of both would be selected.

APPENDIX IV
Page 1

WALTER F. MONDALE, MINN., CHAIRMAN

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United States Senate
SELECT COMMITTEE ON EQUAL EDUCATIONAL OPPORTUNITY
(CREATED PURSUANT TO S. RES. 359, 91ST CONGRESS)
WASHINGTON, D.C. 20510

November 24, 1970

Mr. Elmer B. Staats
Comptroller General of the
United States
General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Staats:

This letter is to request that the General Accounting Office make a review of the implementation of the Emergency School Assistance Program by the Office of Education, Department of Health, Education, and Welfare.

The program, which is presently funded in the amount of $75 million by the Office of Education Appropriation Act, 1971, Public Law 91-380, dated August 18, 1970, provides financial assistance to local educational agencies to meet special problems incident to desegregation in elementary and secondary schools. Statutory authority to carry out the program is contained in six separate acts which are cited in the appropriation act.

The Committees of Congress are currently considering a bill to provide for a single authorization for the program to be known as the Emergency School Aid Act of 1970. The $75 million is the first part of the President's announced plans to ask for a total of $1.5 billion for the program over the next 2 years.

Staff members of the select committee have met recently with representatives of your office to discuss this request and have furnished them with a suggested outline of areas to be covered in the review. It was agreed that during the first phase, the review would be limited to an evaluation of the regulations and procedures established to implement the program. This work is to be performed primarily at the Office of Education headquarters in Washington, D.C., and at each HEW regional office where financial grants have been made. It is contemplated that following the report on this review, follow-on work will be performed at the various school districts included in the review.

It is requested that you select 50 projects for review. At least one project in each State which has received funds, as well as a mix of both large and small grants, should be examined.

It is requested that a report of your findings be provided by January 26, 1971, in order that it may be of assistance in the deliberations on the Emergency School Aid bill. The committee staff will be pleased to meet with your representatives at any time during the conduct of the review should any problems arise.

Sincerely,

Walter F. Mondale

Walter F. Mondale
Chairman

Mr. BELL. And any detailed submission that the administration might want to offer.

Mr. PUCINSKI. Commissioner, I am most grateful that you would take time to be with us to see if we can't all work together to hammer out a bill that will meet the needs of many school districts in this country.

Mr. BELL. Thank you, Mr. Chairman.

Mr. PUCINSKI. Commissioner, proceed in any manner you wish. I know you have a statement by the Secretary, and that statement will go into the record in its entirety and you proceed in any manner you wish.

Either read or paraphrase it or bring in your own report.

## STATEMENT OF HON. SIDNEY MARLAND, U.S. COMMISSIONER OF EDUCATION, ACCOMPANIED BY CHARLES SAUNDERS, ACTING ASSISTANT SECRETARY FOR LEGISLATION, HEW; AND J. STANLEY POTTINGER, DIRECTOR, OFFICE OF CIVIL RIGHTS, HEW; AND JERRY H. BRADER, DIRECTOR, DIVISION OF EQUAL OPPORTUNITIES, OEO; AND PETER E. HOLMES, ASSISTANT TO THE DIRECTOR OF CIVIL RIGHTS, HEW

Commissioner MARLAND. Thank you, Mr. Chairman. I am appreciative of the chairman's consideration of Mr. Richardson's absence today in attending the funeral of Mr. Whitney Young.

He expressed his sincere regrets to this committee for not being present.

I would like to add to the Chairman's introduction of some of my associates gathered here today. He has introduced Mr. Saunders and Mr. Pottinger. I would like to add two other names to the list of witnesses before you, Mr. Chairman.

I am proud to present Mr. Jerry H. Brader, Director of our Division of Equal Educational Opportunity in the Office of Education. Mr. Brader is on my right.

On the right of Mr. Pottinger is Mr. Peter E. Holmes, Special Assistant to the Director of Civil Rights in HEW. I think it is noteworthy that as the committee has moved the insertion in the record of the GAO report which appeared yesterday, that it might be suitable that the response of the Office of Education and HEW to the earlier report of the Washington research study might also be included in the record.

I believe you have it as members of this committee. This report was submitted to the Senate committee at the time of our appearance before them on this same subject and it is, I think, a useful instrument for your review.

Mr. PUCINSKI. I have seen the report, Dr. Marland, and if there is no objection from the committee we shall include that also in the document on this testimony.

It is so ordered.

(The introduction and summary of that document follows. The complete report is in the subcommittee files.)

## EMERGENCY SCHOOL ASSISTANCE PROGRAM: INTRODUCTION AND SUMMARY

In December 1970, Senator Claiborne Pell, Chairman of the Education Subcommittee of the Senate Committee on Labor and Public Welfare, requested DHEW to furnish the Subcommittee with a report on the administration of the Emergency School Assistance Program (ESAP), including an analysis of a report issued on November 24, 1970, by six civil rights organizations, under the aegis of the Washington Research Project (WRP), entitled "Emergency School Assistance Program: An Evaluation."[1]

As a matter of policy, DHEW is committed to a continuing review of all projects funded under ESAP, with particular attention to problems of compliance or program administration. This summary and the attached documents constitute the Department's report to the Subcommittee.

The DHEW report is divided into two principal parts. The first part describes the program or project funding function conducted by the Office of Education (OE), which was responsible for over-all administration of ESAP. This part sets forth procedures followed by OE personnel in processing grant applications, describes OE's post-grant evaluation procedures, and summarizes OE findings in those districts criticized in Chapter II of the WRP Report from a program and project standpoint.

The second part of the DHEW refort describes the eligiblity and compliance clearance procedures of the Office for Civil Rights (OCR). At the request of the Commissioner of Education, OCR, aided by the Office of General Counsel, examined the qualifications of applicant districts from the standpoint of (1) eligibility (e.g. was a district implementing the terminal phase of a desegregation plan?) and (2) the likelihood of the district's compliance after funding with certain civil rights-related assurances. This part explains the pre-grant and post-grant actions taken by OCR and summarizes enforcement activity in those districts alleged in the WRP Report to have had civil rights-related violations at the time the time the WRP monitors visited them. A legal explanation of each of the relevant "assurances" which an applicant district was required to sign also is provided since it appears that in some cases allegations of non-compliance in the WRP Report may be based upon a faulty or different legal construction.

### BACKGROUND

The appropriation for the Emergency School Assistance Program was enacted on August 18, 1970, and the program became operative on August 29, only a matter of days before the opening of school across the Nation. The fundamental purpose of ESAP, of course, was to assist eligible school districts to implement their desegregation plans promptly, completely and without disruption. Funds were quickly allocated to states, and 1319 school districts were identified by the Department as potentially eligible for participation in the program. The Office of Education began immediate reviews of applicants' proposed projects in order to meet the needs of school districts in as timely a manner as possible.

While the program was designed to permit the swift dispatch of assistance, it was also designed to serve only those districts which appeared likely at the time of their applications to carry out their desegregation plans fully and fairly in all regards. The appropriations bill and Department regulations governing the program required applicant districts to promise in their applications that they would, as a condition to the receipt of funds, take steps to eliminate the vestiges of discrimination in the conduct of all their school operations.[2]

Prior to decisions on grant applications, Office for Civil Rights and Office of General Counsel personnel undertook to review each district's current record and, where time and resources allowed,[3] the actual conditions prevailing in the district in order to attempt to assess its current compliance status and the likelihood of its subsequent compliance with the assurances it had made. Plans were also made to conduct post-grant reviews of funded districts in order to evaluate their compliance with the assurances.

A brief summary of the figures indicates the statistical results of the project and compliance features of the program to date. Of the 1319 school districts originally identified as potentially eligible to participate in ESAP, as of the end of January 1971, 882 districts had been funded in the amount of $60.7 million. Approximately 321 districts chose not to apply for ESAP funds after being advised by Department officials of program requirements, including civil rights-related assurances, at state technical assistance conferences held in late summer and early fall, 1970. In addition, applications from 51 districts were rejected either for inadequate project design or eligibility or civil rights-related problems. The remaining 60 some districts were either informally advised of ineligibility or are in a so-called "hold" category pending a resolution of project or compliance problems.

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[1] The six civil rights organizations were: American Friends Service Committee, Delta Ministry of the National Council of Churches, Lawyers' Committee for Civil Rights Under Law, Lawyers Constitutional Defense Committee, NAACP Legal Defense and Educational Fund, Inc., and Washington Research Project.

[2] It should be noted that one of these civil rights assurances did not promise future action only, but also required the district to assure the Government that it has not in the past engaged in unlawful transfers of public school property to private, discriminatory schools. A more detailed discussion of this and the assurances of post-grant compliance is contained in the attached report.

[3] The Office for Civil Rights had 32 professional reviewers available to conduct pre-grant reviews, including on-site investigations, of the approximately 1,000 districts which applied for funds.

Of the 882 districts funded through the end of January, OE personnel have conducted post-grant, on-site reviews of 187 districts to check program and project progress. OCR officials have conducted post-grant, on-site reviews of 147 funded districts to check compliance with the civil rights-related assurances.

The OE and OCR on-site reviews are supplemented with information contained in evaluation forms submitted by each of the funded districts. As of the end of January, 670 districts had returned their evaluation forms as required. Districts which have failed to honor this assurance requirement by returning the completed forms, are being notified of grant termination proceedings. The first of such notifications were sent in early February to 11 districts, and the first termination hearings are scheduled for February 17, 1971. Others will follow as the facts indicating non-compliance are identified and documented, and the Office of General Counsel is able to prepare for hearings.

The information contained in the evaluation forms pertaining to the formation of bi-racial and student advisory committees and to student and faculty assignments are being computerized. The computer printout will identify potential problem areas so that swift follow-up action can be made, particularly in those districts where post-grant, on-site reviews cannot be conducted because of time and resource limitations.

## THE WRP REPORT AND SUMMARY OF DHEW INVESTIGATIONS

The WRP Report focused on the Emergency School Assistance Program in the two major areas discussed above: (1) the nature of certain programs and projects funded, and (2) the civil rights related compliance status of certain districts funded.

*Program and project criticisms:*

With regard to project funding, the allegations made in Chapter II of the WRP Report were based on a reading of 368 ESAP applications, which were provided to the Washington Research Project upon request by the Office of Education. Of the 368 projects read, the WRP Report specifically identified only 35 districts as having alleged program or project problems.

Of the 368 applications reviewed by the civil rights groups, OE personnel have conducted post-grant, on-site reviews to check program and project progress in 109. Of these 109 districts visited by OE, programs and projects were considered to be progressing satisfactorily in 89. In the remaining 20 districts, problems were identified and technical assistance provided in order to accomplish the necessary corrections.

In particular reference to the 35 districts specifically mentioned in the WRP Report, the final OE appraisal of the project proposals submitted by the 35 districts indicated that, while in some cases the funding requests were inartfully or unfortunately worded, the actual projects funded represented valid emergency needs of the local school districts. OE has conducted post-grant, on-site reviews of 26 of these 35 districts. In 6 of the 26 districts visited operational problems were identified and corrective action required. In the remaining 20 districts, programs and projects were considered to be progressing satisfactorily.

*Eligibility and civil rights-related compliance criticisms:*

Criticisms of the civil rights compliance status of certain funded districts are contained in Chapter III and Appendices C–I of the WRP Report. The WRP Report criticisms in this area are based primarily upon interviews with various people during an on-site monitoring program conducted by the six civil rights groups between September 18 and 27, 1970. (See WRP Report pages 70–71)

*Districts*—On pages 21 and 22, the WRP Report identifies three funded districts as presumably ineligible because of an alleged failure to have the necessary terminal phase desegregation plans. DHEW had previously confirmed the ineligibility of two of these districts and has voided their grants and demanded the repayment of funds allotted to date. After a re-investigation of the facts, the third district's eligibility was reconfirmed.

In Appendices C–I, the WRP Report alleges that it found civil rights-related problems in 266 districts. Of these:

132 districts have been visited on-site by OCR personnel (48 of these districts have received OCR post-grant, on-site ESAP reviews since November 1970; the remaining 84 districts received routine, on-site Title VI voluntary desegregation plan reviews during September and October 1970. These 84 districts will be reviewed or evaluated again for ESAP purposes.)

In another 53 districts mentioned in the WRP Report but not visited by OCR, the Department of Justice has conducted investigations or undertaken enforcement actions.

The remaining 81 districts are scheduled for review or record evaluations.

*Alleged Violations*—The WRP Report claims that there were 247 different forms of "clear" or "questionable" violations identified during its September reviews in the 132 districts visited (in most cases later) by OCR compliance officers. The Report explains what is meant by the designations "clear" and "questionable" in defining allegations of ESAP violations. (See WRP Report pp. 69–71). While many of the procedures used by the WRP monitors are probably similar to those used by civil rights specialists in OCR, in some respects there may have been significant differences in methodology, access to information, definitions of law, and burdens of proof.[4]

The Office for Civil Rights, as a Government agency, cannot legitimately conclude that a specific allegation actually constitutes a "clear" violation until it has conducted an evaluation and confirmed findings legally sufficient to warrant formal enforcement proceedings. Therefore, a number of "clear" violations according to the WRP Report may not constitute "clear" violations on the basis of ascertainable facts.

Despite the possible distinctions in approach between the WRP group and Government agencies, the Department has attempted to make a detailed district-by-district comparison of WRP and Departmental findings in participating districts. As this comparison indicates, in some cases violations as defined in the WRP Report have been confirmed as such by OCR on-site reviews. In some cases alleged violations have not been confirmed, either because the violation was remedied between the time of the September reviews of the civil rights groups and the time of OCR's on-site reviews, or because the basis for the WRP allegations simply could not be substantiated upon a more careful review, or because the legal standards the Government must follow in defining "clear" violations are different from those which may have been used by the WRP group. By the same token (as the WRP Report notes), violations may have also occurred in a district after both the civil rights groups' monitors and OCR personnel had reviewed it.

Finally, in some cases of alleged "clear" or "questionable" violations, OCR reviews substantiated the *possibility* of a violation, thereby raising a question as to the practice involved, without permitting the conclusion that a violation had in fact occurred. In such cases, the information must be reviewed carefully by OCR and Department attorneys in order to determine whether further investigation is warranted; whether corrective action can be negotiated on the basis of the information existing; or whether limited compliance resources should be turned to districts having apparently more substantial violations.

With these qualifications in mind, the Department's district-by-district comparison indicates that of the 247 "clear" or "questionable" violations alleged to have been found by the civil rights group monitors in the 132 districts visited *on-site* by OCR:

In 96 cases, no evidence was found by OCR investigators to substantiate the alleged violations.

In 42 cases, alleged violations were substantiated and corrective action is currently being required.

In 89 cases, OCR reviews have identified possible violations which are under evaluation and may be subject to DHEW or Justice Department action.

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[4] It is not clear from the WRP Report, for instance, to what extent the Report's allegations of "clear violations" are based on the first-hand observations of the monitors, or to what extent they are based on second-hand information. On page 71 of the WRP Report, the group states that it defines as "clear violations" those facts which were *not* necessarily observed first-hand by the groups' own monitors, but were "facts related to our monitors, based on first-hand knowledge of the relator." At page 70, however, the Report also states that "monitors were instructed to seek an appointment with the school superintendent or his representative, and to attempt to obtain access to official school records. . .". The Report does not indicate to what extent the monitors were actually successful in their attempts to make first-hand reviews of officil records, to observe official actions, classroom settings, teachers, and so forth.

Similarly, the Report does not indicate in what districts the conditions it found would have constituted an ESAP violation if the district had already been funded, or conversely, what districts had not yet applied for ESAP funds, and therefore had not yet made their assurances of compliance or taken corrective action necessary under the regulations.

In 20 cases, alleged violations have not yet been investigated and are subject to review or evaluation.

Despite the possible differences between the WRP Report's approach and that used by the Government agencies, the Report has served as a valuable enforcement tool, both generally to confirm findings made by Government enforcement officers, and in many cases to draw enforcement attention (as complaints normally do) to specific allegations in specific districts.

Commissioner MARLAND. I think in light of your suggestion as to the way I might proceed with the Secretary's testimony I will indeed attempt to give you the highlights of the materials he has prepared and would deliver were he here.

With your permission, I will recite his highlights verbatim realizing the first person singular will be the Secretary speaking, for purposes of the record.

I will be scanning this and will not attempt to paraphrase particularly but will insure that the Secretary's thoughts do appear before you.

The Emergency School Aid Act is among the administration's highest domestic priorities.

(Secretary Richardson's prepared statement follows:)

### STATEMENT OF HON. ELLIOT L. RICHARDSON, SECRETARY OF HEALTH, EDUCATION, AND WELFARE

Mr. Chairman and Members of the Subcommittee: I am pleased to appear here this morning with Commissioner Marland in support of H.R. 2266, the Emergency School Aid Act of 1971, a bill to provide assistance to school districts faced with the problems of racial isolation and desegregation. I have already had occasion, during the last session of Congress, to work with many of you directly on this proposal, but this is my first opportunity to address the subcommittee formally on this matter of great national concern

The Emergency School Aid Act is among the Administration's highest domestic priorities. In his message of last May 21, transmitting the bill to the Congress, the President said, "Our goal is a system in which education throughout the Nation is both equal and excellent, and in which racial barriers cease to exist." The President reaffirmed his commitment to this goal in January 1971 when he again urged the Congress to take prompt action on this bill and others that were among the unfinished business of the 91st Congress

H.R. 2266, as introduced by Congressman Bell and co-sponsored by Congressman Hawkins, embodies the proposal transmitted to the Congress by the President in January. It should be noted that the bill incorporates the amendments made by this Subcommittee and passed by the House of Representatives in the last Congress. The Subcommittee, which gave careful consideration to this matter at that time, is very familiar with the details of the legislation. Rather than discuss those details now, I would like to submit for the record a section-by-section analysis of H.R. 2266 and then address the more general subject of the problems facing the Nation in this critical area and the need for prompt action on the President's proposal.

On January 14, I issued a statement announcing the results of the latest nationwide school survey conducted by the Department's Office for Civil Rights. These data indicate that, while unprecedented gains have been made since 1968 in reducing racial isolation in many of the Nation's schools, substantial work remains if we are to realize the goal of equality of educational opportunity. For example, while the percentage of minority children attending majority white schools has more than doubled since 1968 in the 11 southern States, there has been little change in this regard in the 32 northern and western States.

The over-all national figures on the extent of racial isolation reflect the stubborn persistence of a condition which is as inimical to the education of white children as it is to the education of minority group children. To date, voluntary efforts to reduce and eliminate racial isolation in the schools have been, for the most part, scattered and of limited scope.

The vital function of the Administration's bill is to redirect local priorities toward dealing in concrete terms with racial isolation in the Nation's public elementary and secondary schools. We believe the legislation endorsed by this

Subcommittee and proposed by the President is designed to deal more comprehensively with these problems than H.R. 4847 which is identical to S. 683 as introduced by Senator Mondale of Minnesota. Commissioner Marland, in testimony before the Senate Education Subcommittee on February 10, detailed the Department's criticisms of S. 683. I would like to submit for the record at this point a copy of the Commissioner's statement.

Mr. Chairman, the great challenge facing us in the immediate future is providing high quality education for *all* children as the integration of the schools progresses. In this regard, the President said in his May 21 message that "desegregation is vital to quality education—not only from the standpoint of raising the achievement levels of the disadvantaged, but also from the standpoint of helping all children achieve the broad-based human understanding that increasingly is essential in today's world." It is out of commitment to this important goal that I urge prompt action on the Emergency School Aid Act.

I wish to emphasize the importance of securing the earliest possible passage of this important measure. As a practical matter, if the legislation is to encourage school districts to prepare for the implementation of voluntary plans by next September, action on the bill is needed this spring so they can plan wisely and qualify for assistance well in advance of the next school year.

The extent of the Administration's commitment is evident in very tangible terms. The President's budget for Fiscal Year 1972 shows a request for $1.425 billion in additional funds under the authority of the Emergency School Aid Act. In addition, the budget indicates an increase in other elementary and secondary programs, which should finally put to rest fears which have been expressed that the Administration would finance the Emergency Aid Act at the expense of other elementary and secondary programs.

Mr. Chairman, during the course of debate on the Emergency School Aid Act in the last Congress certain questions were raised regarding the administration of the $75 million appropriation granted last August for school desegregation activities. We have gained valuable experience through administration of that program, and I would like to give you a brief report today.

As of March 9, 1971, 897 school districts had been funded in the amount of $62.3 million. These funds have contributed greatly to meeting the most critical needs of desegregating school districts this past fall. In our view, the immediate availability of these funds was responsible in large measure for the relatively calm and smooth transition from dual unitary school systems which occurred.

This transition was a substantial one. Prior to September 1968, school districts in the 11 southern States implementing terminal desegregation plans enrolled only 132,000 minority students, or less than 5 percent of the total number. In contrast, school districts implementing terminal desegregation plans in September 1970 involved more minority students than in all previous years combined—nearly 2 million minority students, or 63 percent of the total.

Attempts to desegregate prior to 1970 were in many instances accompanied by serious disruptions of the educational process. Boycotts, property damage, bodily injury, and school closings have all too often accompanied the efforts to end dual school systems. Local educational agencies implementing court ordered or voluntary desegregation plans in greater numbers than ever before were ill-equipped, and in many instances simply lacked the expertise to cope with the massive problems they faced.

Last summer, as the start of the 1970–71 school year approached, there was undeniably an atmosphere of tension and of near-crisis in many quarters. In numerous cases, school administrators, teachers, and parents were faced with a mandate to make very sudden adjustments of substantial consequence to the school system and to the children involved. One may argue that the debate should have ended many years ago, but that argument does not alter the realties of the situation which unfolded in the summer and fall of 1970.

It was precisely at this point that time ran out, that desegregation was no longer postponable. The need arose then and there to encourage peaceful compliance with the law. Stability could not have been better served than by helping school districts implement the fundamental changes which were necessary.

This was the purpose of the Emergency School Assistance Program—to assist school districts in achieving desegregation by contributing to the cost of new or expanded activities designed to make such desegregation more effective. In general, activities funded under the program have proven their worth. One reason they have been effective is that projects have been amended and redesigned as required to meet local problems arising on a day-to-day basis. Experience to date indicates that this flexibility tends to reduce polarization and provide a working relationship for maintaining and improving the quality of education.

Given the pressure of time and the nature of the undertaking, it is remarkable that of more than 300 voluntary desegregation plans which took effect last September, only four districts reneged outright on their commitments. In our opinion, a measure of credit for this encouraging fact must go to the Emergency School Assistance Program which clearly exerted a positive influence in strengthening the resolve of local leadership to adhere to the features of their desegregation plans.

The decision to allocate ESAP funds as quickly as possible to desegregating school districts was mine, and I take full responsibility for it. By emphasizing speed, we did sacrifice a degree of control, but we did not abdicate control. On the contrary, despite the pressures of time, we did review each project in terms of its design and compliance with program regulations prior to funding. Where serious problems were found to exist, the project either was not funded or funding was delayed pending a resolution of the problem.

The post-grant evaluation and enforcement phase of the ESAP program began in November. Office of Education (Title IV) staff members have conducted on-site reviews of over 300 funded districts. Office for Civil Rights personnel have conducted on-site reviews of over 180 districts.

Additionally, the Office for Civil Rights has developed and utilized comprehensive evaluation and compliance forms in a systematic, computerized effort to monitor the large number of ESAP projects that have been funded. These forms, required of all ESAP grantees, assist the Office for Civil rights in identifying problems of noncompliance such as failure to establish biracial and student advisory committees, failure to achieve the *Singleton* black-to-white faculty ratio in every school, teacher discrimination, and discrimination in student assignments. The forms provide valuable information about the operation of ESAP projects, and, because the district is required to disclose facts relating to the above matters, serve as an effective tool for achieving voluntary compliance with program requirements.

Mr. Chairman, what we have tried to present in this brief statement is a picture of the Department's efforts to ensure that recipients of Emergency School Assistance are abiding by their program and civil rights commitments.

My associates and I will be the first to admit that the process has not been an easy one. As I indicated earlier, nearly 900 individual school districts have been funded under the program. The fact that there are only 32 education compliance officers available to the Office for Civil Rights in the regions to monitor the regulations on-site and to evaluate the information obtained—in addition to their regular Title VI enforcement duties—may give some indication of the practical problems involved in doing a comprehensive job.

Where possible violations are alleged to exist, verification may take a compliance officer several days, while post-visit evaluation, consultation with attorneys, and preparation for hearing can take a much longer time.

In addition, a number of the civil rights-related assurances were, when formulated, unique to the previous investigative experience of the Office for Civil Rights. Indeed, the whole question of what constitutes in-school discrimination is comparatively new and extremely complex.

We do not mean to suggest that the Emergency School Assistance Program lacks adequate follow-through. Compared to other grant-in-aid programs, the opposite is probably the case. This program has been subject to the most intensive scrutiny of any program of similar dollar size in recent memory.

Mr. Chairman, our experience in administering the $75 million program has taught us one very important lesson: It is essential to have the proper legislative authority established well in advance of the time when initial grants are made. Adequate lead-time will provide us with the opportunity for program planning and pre-grant evaluation, which are essential to a well-administered program. This is particularly true in regard to districts submitting plans to reduce and eliminate racial isolation, since many of these districts would have to design plans and have them approved by the Department prior to the beginning of the school year. If Emergency School Aid funds are to begin reaching school districts in the coming fall, Congress must act immediately to provide legislative authority. If we are to benefit from our past experience, we must have time.

We look forward to cooperating again with the Subcommittee in an effort to secure early enactment of H.R. 2266. Thank you.

Mr. PUCINSKI. Thank you very much, Dr. Marland. We will try to adhere scrupulously to the 5-minute rule on the first go-around so everybody will have an opportunity to ask their questions, and then we will be able to develop the subject as time permits.

Commissioner **Marland**. May I add a small note? My own testimony which would have been perhaps summarized or treated briefly following the Secretary, had he been here this morning, has been submitted to the committee. You may wish to place that in the record as well. It does give a rather detailed accounting of the expected content and function of this proposed law.

Mr. **Pucinski**. Doctor, I think it would be helpful, though, if you would be good enough to perhaps summarize some of that testimony now. We have your statement here, but I think that we are interested primarily in some of the rebuttal which you have in your testimony.

Commissioner **Marland**. I can be brief, because I do endorse this verbatim.

Mr. **Bell**. I would move, however, that this be submitted for the record.

Mr. **Pucinski**. It goes without saying Dr. Marland's entire statement will appear in the record at this point.

(The statement referred to follows:)

### STATEMENT OF HON. SIDNEY P. MARLAND, JR., U.S. COMMISSIONER OF EDUCATION

Mr. Chairman and Members of the Subcommittee: I am pleased to be here today to testify in support of the President's Emergency School Aid Act of 1971. Nearly a year ago, the President proposed a program to assist school districts in meeting the additional educational costs necessitated by desegregation. Two weeks ago, he again recommended legislation to the Congress designed to achieve this purpose.

The Secretary has already underscored the urgent need for enactment of this legislation. I will, therefore, concentrate on its details, including the areas of difference from the bill submitted last year, and on the several reasons for the approach suggested by the President over others which have been suggested.

The Emergency School Aid Act of 1971 authorizes the appropriation of a total of $1.5 billion over a two year period. Funds appropriated for one fiscal year remain available for obligation during the subsequent fiscal year.

Eighty percent of the funds appropriated are allotted among the States by the Secretary of Health, Education, and Welfare on the basis of each State's relative enrollments of Negro, American Indian, Spanish-surnamed American, or other minority group children. The legislation submitted last year provided that minority group children in districts desegregating pursuant to court order or Title VI Civil Rights Act plan should be double-counted for purposes of State allocations. This feature has been eliminated in this year's bill, and all areas of the country are treated exactly the same under the revised formula.

We propose that three categories of local educational agencies be eligible to apply for assistance:

those implementing a desegregation plan pursuant to a court order or Title VI plan;

those voluntarily seeking to desegregate an entire school system; and

those seeking to eliminate or reduce racial isolation in one or more schools in a system, or to prevent such isolation from occurring.

These eligibility requirements are uniform nationwide. Any school district seeking to integrate its schools—or to prevent resegregation from occurring—can qualify under one of the three categories.

Financial assistance would be available for a wide variety of activities related to the desegregation process:

Remedial and other services to meet the special needs of children in desegregation schools;

Provision of additional professional or other staff members and training and retraining of staff for desegregating schools;

Development and employment of special new instructional techniques and materials;

Innovative interracial educational programs or projects involving joint participation of minority and nonminority group children, including extracurricular activities and cooperative arrangements between schools in the same or different school districts;

Repair or minor remodeling of existing school facilities, and the lease or purchase of mobile classroom units;

Provision of transportation services for students when voluntarily undertaken by the school district;

Community activities, including public education efforts, in support of a desegregation plan;

Special administrative activities, such as the rescheduling of students or teachers, or the provision of information to parents or members of the general public;

Planning and evaluation activities; and

Other specially designed programs or projects meeting the purpose of the act.

Obviously, the bill gives local education officials the widest possible latitude in devising programs designed to meet the special needs of the children of their particular school district. The only limitations on supportable programs are that they require additional funds, over and above the normal expenditures of the school district, and that they be directly related to desegregation or the elimination, reduction, or prevention of racial isolation.

Section 7 of the President's proposal sets forth the criteria that the Secretary must use to approve project applications:

the need for assistance;

the degree to which the program to be funded and the overall desegregation plan are likely to effect a decrease in racial isolation;

the comprehensiveness of the desegregation plan;

the degree to which the program affords promise of achieving the purpose of the Act;

the amount necessary to carry out the program; and

the degree to which the desegregation plan involves the total educational resources of the community, both public and private.

These criteria authorize the Secretary to examine the adequacy and comprehensiveness both of the school district's overall desegregation plan and of the project for which assistance is being requested.

Section 8 is a new section, not included in last year's proposal. It represents a response to the concerns expressed during House and Senate hearings that Federal funds not be used to aid, directly or indirectly, practices or activities of a discriminatory nature. To be eligible for assistance a local educational agency must provide the Secretary with assurances that it has not unlawfully disposed of property or services to a private segregated school; that it has not reduced its fiscal effort or lowered its per pupil expenditure; that it is not operating under an ineffective freedom of choice plan; that it will not hire, promote, or demote professional staff on the basis of race; and that no practices (including testing) will be employed in the assignment of children to classes so as to result in the discriminatory isolation of minority group children. These safeguards will assure that Federal funds will only be used in projects which actually reduce or eliminate racial isolation and will prevent their use to continue discriminatory activities.

Twenty percent of the funds appropriated would be reserved to the Secretary rather than apportioned among the States. The Secretary may use these funds to support model and demonstration programs of national significance. This provision can have a far-reaching effect on the whole process of desegregating our schools. Too often we are unsure about "what works" in education. The discretionary funds available to the Secretary will enable him to support programs that are potential models for other school systems, without regard to the limitations of State distribution formulas. This "risk capital" invested in demonstration desegregation programs can produce a significant impact on the entire educational system.

One of the bills before the Committee, S. 195, embodies the essential elements of the President's proposal. However, as he noted in his introductory statement of January 26, Senator Javits made a few changes in the language transmitted by the President. Most of the changes do not substantially alter the legislation, and we have no opposition to their inclusion. However, we would like to note two substantive differences from the legislation we submitted:

First, S. 195 includes a fourth category of eligible local educational agencies—those operating unusually promising pilot programs for minority group isolated children, designed to improve their academic achievement in minority group isolated schools. This category is similar to one included in the Administration's proposal to the 91st Congress, but not included in our recommendations this year. Instead, we have endorsed the compromise which was worked out with bipartisan agreement in last year's House-passed bill: that interracial or compensatory projects be permitted if they are part of a larger overall desegregation plan developed by a local educational agency. This compromise reflects the strong feeling of committee members in the House that the focus of the bill should be on effective desegregation, and that projects which provide essentially compensatory education are better funded under Title I of the Elementary and Secondary Education Act. We feel this to be a reasonable compromise, and therefore we support it.

S. 195 also contains a prohibition on any local education agency's receipt of funds if it has engaged in certain discriminatory acts after August 18, 1970, and provides for waiver of the prohibition by the Secretary under stated conditions. These provisions are not included in the original bill submitted by the Administration because we do not feel they are necessary. Section 8 already requires a local educational agency to make assurances of nondiscriminatory conduct in order to be eligible for assistance, and any false assurance or violation of assurances given would be subject to appropriate administrative or legal action. The addition of the waiver process provides further complexities under the Act without providing additional safeguards.

S. 683, also before this Committee, suggests another approach to the problem of school desegregation. There are many points of agreement between this bill and the Administration's proposal. Both are designed to assist school districts which wish to desegregate in meeting the extra costs of taking that action. S. 683 directs its attention to the establishment and maintenance of stable, quality, integrated schools which can serve as models for other districts; the President characterized his proposal as "a measured step toward the larger goal of extending the proven educational benefits of integrated education to all children, wherever they live." Certainly there is need for model-building and demonstration programs of effective approaches to integration; Section 9 of the Administration's bill reserves 20 percent of the funds appropriated to accomplish such demonstration of programs of National significance. We also agree that there is need for strict assurances of nondiscriminatory behavior by applicant school districts.

However, we believe the approach of S. 195 is superior for several reasons:

First, we feel that more actual desegregation can be achieved under the Administration bill than under S. 683. The Administration bill focuses on planning for desegregation which has a system-wide impact and involves large numbers of students. In contrast, S. 683 limits its attention to the establishment of one or more stable, quality integrated schools, without regard to their relationship to other schools of the local educational agency in which they are located.

Under the Administration proposal, the Secretary has the authority to examine a local educational agency's entire desegregation plan to assess its comprehensiveness and the degree to which it will actually achieve its purpose, despite the fact that the district is only requesting Federal assistance for a small piece of the overall plan. In this way, the Secretary can assure that only meaningful desegregation efforts receive support.

The same cannot be said for S. 683. Under that proposal, the Commissioner would be limited to examination of a school district's proposal for the establishment of one or more stable, quality integrated schools. He would have no authority to judge the impact of such an action on the district as a whole or its effect on other schools within the agency which did not become stable, quality integrated schools. A local educational agency could, therefore, build a single model school to the detriment of the children in all its other schools. A school would be desegregated without bringing about any real progress toward desegregation of the entire system.

Second, most school districts in the country are not eligible for assistance under S. 683. The legislation requires that an eligible local educational agency enroll at least 1,000 minority group children, representing at least 20 percent of its enrollment, or at least 3,000 such children, representing at least 10 percent. It is estimated that local educational agencies meeting these criteria will number only about 1,000, out of about 22,000 school districts in the country. It is true that these 1,000 districts enroll more than 7 million of the 8.7 million minority group children in the country. But, looking at the figures differently, it also means that more than 1.6 million minority group children will be eliminated from participating in programs assisted under the bill simply because of their numbers or the size of their school district. It does not seem reasonable to exclude children on this basis, without taking their educational needs into account at all.

In addition, the limitations of the formula mean that a State which neither has a school district of sufficient size nor a Standard Metropolitan Statistical Area, such as Vermont, will not be eligible for any assistance for desegregation. A $100,000 minimum apportionment per State is meaningless if no local educational agency in that State can qualify for eligibility. At the same time, there might be school districts within the State with serious problems of racial isolation which could receive assistance under the Administration bill.

Third, it is questionable whether the projects funded under S. 683 would truly be models for desegregation on a large scale. In districts with substantial, but not majority, minority group populations, the standard could encourage remedial action almost exclusively in those schools where racial balancing is easiest, leaving schools with high minority concentrations untouched. For example, in a district with an overall minority group population of 20 percent, and with individual schools ranging from 10 percent to 90 percent, local school officials might tend to target assistance on those few schools which are closest to the 20 percent balance. This would leave those schools which presumably need assistance the most—those with the highest concentrations of minority students—with no support.

On the other hand, in those districts, like the District of Columbia and many other major urban areas, which have extremely high concentrations of minority students, 60 percent or more, schools with substantial minority populations less than the district-wide average (30 percent, for example) would have to be *resegregated* in order to comply with the standard set forth in the law. In this type of district assistance is badly needed to maintain an integrated setting and to prevent a school from passing the "tipping point" and becoming resegregated, but such a school could not receive help because is it not "substantially representative of the minority group and nonminority group student population of the local educational agency in which it is located."

Finally, we feel that the various set-asides contained in S. 683 do little to further the purposes of the legislation. For example, 5 percent of the funds must be spent on educational television, which seems to us unnecessarily restrictive. The Administration proposal is sufficiently flexible to support educational television as part of a school district's desegregation plan, if programming is linked to the plan so as to have a significant impact. Without such a linkage—and S. 683 does not provide it—television programming would not necessarily have any direct connection with actual desegregation taking place in a local educational agency.

Similarly, educational parks may be one device to encourage integration. However, S. 683 does not provide for the development of programs for educational parks. It sets aside 10 percent of the total funds for their construction. This is a sizable amount of money, but in the light of building costs, it is inadequate to desegregate any large school system. Pittsburgh, for example, planned desegregation through the creation of several educational parks. The plan had to be abandoned when its cost rose, through inflation, to nearly a quarter of a billion dollars

Construction is necessarily a long-term proposition. It takes time to build a building. No immediate desegregation can result from the funds proposed to be set aside for educational parks. We would prefer to see more immediate impact on the problem of racial isolation accompany the infusion of large amounts of Federal money.

S. 683 also provides a set-aside of Federal funds to support lawsuits against State and Federal officials. We strongly oppose this provision for several reasons. First, it would tend to throw into the Federal courts the entire burden of litigation in the areas specified. Many suits for enforcement of the Fourteenth Amendment with respect to operation of the public schools are now litigated in State courts particularly in the North and West. Since this bill would provide funds for counsel fees only if the litigation takes place in Federal courts, potential plaintiffs would have an incentive to sue in Federal court. Broadening the provision to include other courts would only compound administrative difficulties already inherent in the proposal—What constitutes "reasonable" attorneys' fees? What are "costs not otherwise reimbursed?" How would payments be controlled? The provision could also tend to discourage negotiation and settlement of complaints, since the defendant would not be liable for plaintiff's counsel fees, as he may be under existing law.

The question of the Federal Government's financing private suits to enforce Federal law extends well beyond the education field and should be considered in its larger context. The whole question of priorities in the enforcement of Federal law is necessarily involved. Would $45 million, or any other sum, be better spent on enforcing anti-discrimination laws with respect to the schools than it would be on enforcing such laws with respect to housing? Would it be better spent on providing more broad-based legal services for the disadvantaged through the OEO legal services program than on suits to enforce specific Federal laws? Or would it be better spent on adding additional enforcement personnel to existing Federal enforcement staffs? These and similar questions need to be examined in detail before any such provision is enacted.

In conclusion, I urge the Subcommittee to take prompt action on the President's proposal, to assure that funds will be made available to local school officials as quickly as possible. The sooner such assistance is provided, the more effectively they can plan for use of Federal funds to meet the additional cost incident to desegregation.

While we prefer the approach of S. 195, we recognize that S. 683 seeks identical objectives and contains a number of constructive proposals. We would appreciate the opportunity to work with the Subcommittee to resolve the differences in the two bills, in the hope that we can all reach early agreement on the means—as well as the need for action.

Mr. Pucinski. Now do you wish to summarize?

Commissioner Marland. A very brief extract of it, Mr. Chairman. I thought it would be useful to the committee to recall the typical kinds of program activities which we perceive as attainable within this proposed law, and also recognize from the start that the creativity and leadership at local level will have a good deal to do with inventing the new forms in which the removal of racial segregation can be handled.

On page 2 of my testimony, I would recite what we see as some of the typical opportunities furnished us to support new forms of school management. That will help us with this problem.

We offer these as examples:

Remedial and other services to meet the special needs of children;

Provision of additional professional or other staff members and training and retraining of staff for desegregating schools;

Development and employment of special new instructional techniques and materials;

Innovative interracial educational programs or projects involving joint participation of minority and nonminority group children, including extracurricular activities and cooperative arrangements between schools in the same or different school districts;

Repair or minor remodeling of existing school facilities, and the lease or purchase of mobile classroom units;

Provision of transportation services for students when voluntarily undertaken by the school district;

Community activities, including public education efforts, in support of a desegregation plan;

Special administrative activities, such as the rescheduling of students or teachers, or the provision of information to parents or members of the general public;

Planning and evaluation activities; and

Other specially designed programs or projects meeting the purpose of the act.

With that, I do offer this summary for the committee.

Mr. Pucinski. Thank you very much. Dr. Marland, I wonder if you could just give us a capsule view of how you see the whole problem of desegregation proceeding in those communities that would be helped by this legislation. Now we said last year when we rushed this legislation through that there was a crisis in many communities. How do you see the picture today?

Commissioner Marland. I hold, Mr. Chairman, that there is still a grave crisis in many of the schools in this country, especially our large city schools. The crisis has many parts. Among its parts is the grave problem of school finance and the deep and frustrating questions as to the overburden that cities face in terms of their many other fiscal needs as compared with education.

We hold, of course, that education must be held high among these many priorities. Even so, city after city is facing grave budget deficits at this very moment.

Quite apart from this crisis, there is the crisis and concern for the amelioration of racial isolation to which we are now addressing ourselves. There are very few large cities in this land where there is not a very substantial, if not a majority, number of minority ethnic youngsters. And in many cases these youngsters are not learning adequately.

To improve the articulation of young people, majority and minority, is one essential step, long overdue, that this country must undertake and face. It is to this issue that this legislation addresses itself, and I would hold that many educational opportunities as well as the physical bringing together of young people reside in this legislation, as implied in the highlights of my testimony which I have just cited.

Opportunities for increased tutoring of a disadvantaged child—and we will not call him disadvantaged necessarily in this context, but we will call him of a minority ethnic group, whether that be chicano, Indian, black or Puerto Rican, or whatsoever. We are dedicated, in the Office of Education and the Department of HEW to resolving racial isolation in our schools. It is an uphill pull, and the chairman and other members of this committee well know many of our great cities have struggled desperately, frustratingly, and so far with only moderate success, to search for ways to achieve this goal.

Certainly the Congress is now our only recourse to ask for the fiscal assistance and moral support that will bring about a reconciliation of this historic and shameful difference in the grouping of children in our schools.

Mr. PUCINSKI. Would you or any of your associates be willing or able to give us some dimension of progress that is being made in this field? Where do you think we stand today in this whole effort to overcome racial isolation? How would you, as Commissioner of Education, how do you appraise the situation?

Commissioner MARLAND. I am going to respond briefly and, generally, and then we will ask Mr. Pottinger to respond further.

I would say at this stage, as a school administrator, I see this as a problem without quick, easy, or neat solutions. It has been evident from the GAO report which you cited this morning that there is no simple, quick way of resolving this issue, no matter how much we struggle and believe it should be solved. As a school administrator, I have worked personally at this problem for a good number of years and have made progress by inches and by minute moves, regrettably, often for lack of money, and yet have felt a continuing frustration in major successes. There are, however, now before us some accomplishments that give us promise in the light of the work supported by this committee last summer in which Mr. Brader and Mr. Pottinger both had a large personal hand, roughly at the rate of 24 hours a day during those summer and fall months.

Mr. Pottinger, would you care to amplify with illustrations?

Mr. POTTINGER. Mr. Chairman, to comment on the extent of racial isolation and the condition prevailing in the country at this time, I think that we might bring your attention briefly to the national school survey which was conducted in 1968 and again in 1970.

Roughly categorizing that information, we find that there are 500 school districts, approximately, in the 32 Northern and Western States which have one or more schools that are racially identifiable or which, in another way of defining it, are more than 50 percent minority student in makeup. In the 11 Southern States there are approximately 6,700 school districts which at one time or another had been part of an officially established dual school structure, officially established by State law.

The progress that we have found has been presented on January 14 by the Secretary—and I would move, if I may, to include that progress report or status report as part of the record at this time. I would comment that because of the effort that has been made both by Federal agencies and by local school officials, parents, and teachers, primarily in the Southern States where the official dual school system had prevailed, that the progress we find is substantially greater there than it has been in the rest of the country.

In brief, we find that over the last 2-year period the number of minority or Negro children attending majority white schools has doubled, from 18.4 percent to 38.1 percent, in that period.

Mr. PUCINSKI. In what part of the country?

Mr. POTTINGER. In the 11 Southern States. At the same time the number of Negro children attending all-Negro schools—schools made up solely of their own race—has been reduced from 68 percent to 18.4 percent during that period.

Mr. PUCINSKI. What about charges, Mr. Pottinger, that while children are being moved into schools, they are being segregated within the schools? Is there any basis for these charges?

Mr. POTTINGER. Yes, I think in some cases we have been able to identify unjustifiable segregated classrooms. I might add that these cases have been rare, relatively speaking. We have some data which is not conclusive at this point, but which we hope to have finished in a matter of days, indicating precisely where there are all-black classrooms existing. In those situations, the Office of Education informs us that legitimate ability grouping or other assignment practices would not ordinarily lead to that result. We have found cases, as I mentioned, where we believe with the assistance of educational experts that racially identifiable classes should not exist.

We have negotiated with those districts or put them on notice that they should end it. And in the followup efforts that we have made so far, they have done so. We have specific names of districts in that regard which could be submitted into the record if necessary.

Mr. PUCINSKI. We have had reports that some of the schools even go so far as to have a dual bell system, where the white children move from class to class under one set of bells and the nonwhite children move from class to class under another set of bells. Does that still exist?

Mr. POTTINGER. The Office for Civil Rights identified a school district, to my knowledge only one, 1 or 2 years ago which had that condition prevailing. We have not known of any that have that condition this year. Clearly, that is an illegal practice, and if we were to learn of it either through the complaint process or through our own self-initiated reviews, we would immediately bring that to a conclusion.

Mr. BELL. Thank you, Mr. Chairman.

Mr. Pottinger, my first question. It has come to my attention that Senator Mondale has claimed that HEW provided emergency school assistance to a district in Florida which had sold a surplus school building to a private segregated academy for a mere $10. Have you investigated this situation? And if so, what are your findings?

Mr. **Pottinger.** Yes, Congressman. I believe you are referring to reference by Senator Mondale on February 26, when we testified there, to Gadsden County, Fla. At that time, he did indicate that he had such information. We had not yet, at that time, completed the evaluation of our onsite review of the district in the postgrant phase. We have since that time reviewed that matter and been unable to substantiate that allegation.

What we have found, briefly, is that there were two transfers of property: one which was of surplus property pursuant to public auction where the property apparently was sold in excess of its fair market value. That is admittedly and clearly not an indisputable violation of emergency school assistance program regulations or of the Mondale amendment.

We also identified a second transaction in that district which apparently took place not to a private academy at all. In fact, I am not sure it was a building. It was not for $10. And we have since that time, requested further information, both from the Senate and from the district, and as yet have gotten no further information to substantiate this charge of a $10 sale.

Mr. **Bell.** In that case, it was not substantiated. In how many other cases have you been able to substantiate instances of noncompliances?

Commissioner **Marland.** Mr. Chairman, and Mr. Bell, at the risk of intruding—I am sure Mr. Pottinger will want to answer that shortly—you will find that in the report that we are submitting for the record we have given an accounting of all of the investigations that we have made and summarized this information for you which will be of use to you.

I would now turn to Mr. Pottinger to amplify.

Mr. **Pottinger.** Briefly, at page 8 of our report you will find that, of the allegations submitted by the task force—as the chairman has referred to it—undertaken under the direction of the Washington research project, that in 247 cases there were allegations of clear questionable violations in the 132 districts which both the Office for Civil Rights and the Washington research project monitors had visited.

In 96 instances we found no evidence that we could substantiate the alleged violations. In 42 cases alleged violations were substantiated and corrective action is currently being required. In 89 cases that the Office for Civil Rights review have identified possible violations which are under evaluation, they may be subject to either our action or Justice Department action. And in 20 cases alleged violations have not yet been investigated. This was as of a couple of weeks ago, so these figures will have changed somewhat.

Mr. **Pucinski.** Will my colleague yield?

I think it is important to point out that in the GAO report, unlike your own investigation, which was on site in the 132 districts, the GAO report clearly stated on page 1 that no work was done at the grantees' school districts by the General Accounting Office. Consequently this report does not contain comment on the procedures and expenditures of the school district relating to these grants.

As a follow-on to this review "GAO plans to make reviews of the school district to examine into the expenditures of the grant funds." I think it is significant and, as we read the GAO report, we should realize that it is based on interviews in Washington for the most part, or interviews with other interested parties. But I am going to be anxious to see the followup by GAO in onsite inspections.

Mr. **Bell.** I understand that the civil rights organizations which issued a report critical of the Emergency School Assistance Act last November had based their findings on their onsite review of over 400 school districts. They conducted the review in a very short period of time. I think it was approximately one week in late September.

What differences are there between the type of onsite reviews these civil rights groups conducted and the type of review conducted by your compliance people?

Mr. **Pottinger.** Well, there are several differences. I think that the differences do not reflect adversely on either their method of reporting or on ours, inasmuch as we have said before we are not attempting, by noting these differences in our report to the subcommittee or in my report to you now, to disparage their report.

I think to some extent, however, we are comparing apples and oranges when we compare the Washington research project report and governmental reports. Their report, first of all—as you know and as their report indicates—was done in September, the early days of opening of school, by about 400 monitors.

We have many fewer people than that to deal with the issues. Our reviews have taken place over a period of many months, with 32 professional compliance officers. The meaning of that is important. In many cases it may be that violations which were reviewed by the Washington research project monitors were clarified or were corrected before our officers were able to get to the district.

Conversely, we may have missed violations in the absence of an onsite review during the first few months of the opening of school. It is possible that we both missed violations.

Second, I would point out that our burden of proof is considerably different from that of any third party, whether that project or any other. It is necessary for us not only to report an allegation of a violation. It is essential that we identify it; that we document it, and that we present those findings not only to the Office of General Counsel but to the district itself before official action to terminate funds can take place. Obviously, that is required by due process standards, and the Washington research project report did not purport to do that. So it is not as though they have fallen short of their mark. It is simply their report was identifying allegations which did not necessarily require them to followup for purposes of enforcement.

Mr. **Pucinski.** Mr. Ford?

Mr. **Ford.** Then what you are saying is that you won't necessarily strike all 98 of the cases where you found no violation? What you found was something less than what you believed to be necessary to sustain the burden of proof, that you as an administrative agency would use as a measure as to whether or not there was a violation?

Mr. **Pottinger.** In some cases, that is right.

Mr. **Ford.** But the significant thing is we are here talking about whether the glass is half full or half empty. Because out of 247 alleged violations, 131 you judged were either violations or you did not investigate them out of the 96 that you previously categorized as not violations when you investigated them, you now indicate to us that you used a different standard of proof.

And that is acceptable, but I think it is important that the record show that you are not even, as to the 96 indicating disagreement with the Washington research report.

Mr. **Pottinger.** No, the record can't show that, because that is not what I said.

Mr. **Ford.** That is what you said. The record is very clear. You indicated you did not use the same standard, and we understand why you would not. But it is very important that you make that clear when you evaluate this Washington research project report you are not urging this committee to believe that because some or even if for that matter a majority of the allegations in that report were found by your investigation to have been corrected or not, that existed when you got there, that we should disregard it.

Mr. **Pottinger.** Disregard the report?

Mr. **Ford.** Yes, sir.

Mr. **Pottinger.** Not at all.

Mr. **Ford.** What do you have to say about the GAO conclusion?

Mr. **Pottinger.** May I simply state for the record, before that, to clarify on the 96 cases——

Mr. **Ford.** I would rather hear Mr. Marland's statement for the record, what he has to say about the conclusions.

Mr. **Pottinger.** May I clarify on the record what is clearly a misunderstanding? My comment to Congressman Bell about the differences in the burden of proof——

Mr. **Ford.** We will go into that later. I only have 5 minutes. Please answer my questions during my 5 minutes.

If the witness does not respond to my questions, I respectfully submit it should not come out of my time.

Mr. **Pucinski.** I think the gentleman is trying to elaborate on a question that the gentleman from Michigan did ask.

Mr. **Ford.** I don't think any elaboration is necessary. I would like to ask the Commissioner for his response to the GAO conclusions.

Mr. **Pucinski.** Yes, but you did ask Mr. Pottinger a question and he was attempting to respond, and then you said "What is your reaction to the GAO report?" And he began answering that and you said, "I would rather have the Commissioner answer it."

So I would think that Mr. Pottinger ought to answer your first question and then we will go to the Commissioner.

Mr. **Ford.** I am satisfied with Mr. Pottinger's answer.

Mr. **Pucinski.** The question to you is, what is your appraisal of the GAO report?

Commissioner **Marland.** I have not yet read the GAO report. It reached me late last night.

Mr. **Ford.** Since you have not read it, there would be no point in commenting. But I wonder at this point in the record if we might not have unanimous consent to permit the Commissioner to submit a categorical response to the conclusions contained in the GAO report.

Mr. **Pucinski.** That has already been agreed to when we commenced with the proceedings.

Mr. **Ford.** Mr. Commissioner, my understanding is that here and elsewhere across the country school people are being told that the money to be authorized by this legislation would be with respect to on-going educational programs, new money. That is to say, that it would not be necessary to draw this money from any on-going educational program to finance the objects of this legislation. Is that correct?

Commissioner MARLAND. I would defer to Mr. Saunders, who is clearer on the detailed statement of the proposed legislation. But my general response to your question would be this: that any effort in which Congress initiates large social action which this bill calls for, it would be my own persuasion and the intent of our legislation that there be no diminution of effort at the local level.

This would be not a sum of money to supplant existing funds, but rather to add on to existing effort. And if that is the question——

Mr. FORD. No, my question is as to the President's budget, for example. When we talk about a billion dollar expenditure for this legislation, are we talking about a billion dollars in addition to what we are already expending for Federal aid to education?

Commissioner MARLAND. Yes, sir.

Mr. FORD. With that in mind, I would like to ask you if you would object to inserting in this legislation the amendment that was adopted on the floor of the House last year when this legislation was passed, offered by me, that would restrict the expenditure of these funds until the other programs under the Elementary and Secondary Education Act were funded at the level of the previous year.

Commissioner MARLAND. Our budget proposal, Mr. Ford, has some several million dollars in excess over the previous year in addition to the sums requested under this legislation.

Mr. FORD. Then you would have no objection to an amendment that in effect held the funds under this legislation hostage until the Congress and the administration agreed to spend at least last year's level on the other elementary and secondary education programs?

Commissioner MARLAND. I would question Mr. Chairman, and Mr. Ford, whether that is a fair arrangement under which we have to manage billions of dollars of programs, that one be contingent upon the other. If I understand you correctly you would say no funding would occur until this legislation passes and the appropriations are correspondingly made. It would be a very bad way to do business in terms of the obligations. It would seem to be a form of hostage keeping of funds as you say, until certain other legislative actions materialize. And I just as an observer would question whether this would be good legislation.

Mr. FORD. As a matter of fact, it would work the other way around, because there is no change in the world, with all the speed that is possible in both houses, of this legislation passing the Congress before the appropriations for this year for elementary and secondary education are considered by the two Houses.

It is just inconceivable that the time sequence could reverse itself. That being the case, you would have no concern as spokesman for the administration that in fact the administration is going to urge the expenditure of new funds and not the rearrangement of other funds from educational programs for this program.

Commissioner MARLAND. I don't think I do agree with that, but I would ask for more technical help on this suggestion from Mr. Saunders, our Deputy Commissioner.

Mr. PUCINSKI. I am afraid the time has expired. We will come back to that question on the second go-around.

Mr. Forsythe?

Mr. FORSYTHE. Mr. Chairman, thank you.

I would like to direct a question to Mr. Pottinger and afford him an opportunity to complete his explanation of the matter of these districts.

Mr. POTTINGER. Thank you.

I was about to say that my answer to Congressman Bell concerning the differences in standards that are imposed upon a Government agency necessary to take official action and on third parties essentially conveying complaints, was directed at the entire process.

In those 96 cases where we found no evidence or even substantial evidence of a violation, I was not saying and will not say that in each of those cases we found some problems. But we did not feel administratively that they were sufficient to bring enforcement action. In some cases, that was true. In some cases we found no evidence at all to substantiate the allegations of violations.

The point I am making here is not that the Washington Research project report was therefore totally erroneous or wilfully erroneous, but that conditions themselves change. We are not dealing with a static situation when we are talking about a desegregation process or even educational progress. Conditions change, and sometimes they change radically. In some cases it may have been that the information conveyed to the Washington Research project was faulty. In some cases it may have been that it was accurate, but that the conditions later changed.

Those are the kinds of problems that we face when we try to judge, identify, and document official cases upon which official action can be taken.

Mr. FORSYTHE. Thank you very much.

Thank you, Mr. Chairman.

Mr. PUCINSKI. Mr. Hawkins?

Mr. HAWKINS. Mr. Marland, it seems to me that there is general agreement among everyone that there were serious abuses in the program, substantial evidence of violation, and some actual waste of Federal money. Not only did the Washington Research group and other civil rights groups say that, but also the GAO report said that; and as I get the tone of your testimony this morning, you do not deny that there have been such abuses. So it seems to me that any effort to either play it down or to ignore it or to try to answer on either side individual charges, would be completely a waste of time.

I get the impression that this is admitted, but in the testimony which you presented this morning you indicate—which I assume by implication—that there are real practical problems.

Mr. Pottinger just said that this is not a static situation, that it is a changing one. I think all of these things we can agree with you as to the practical problems involved. But then I wonder why it is that in view of this, you oppose apparently some of the provisions that were offered in the alternative, the alternate bill before the committee, the Mondale approach, such provisions as the earmarking of funds, the involvement, greater involvement of local groups, parent groups, biracial groups, interracial groups, biracial student activity.

In these things it seems to me, recognizing the problem which is presented to you in the lack of enforcement funds, the practical problems involved in all of this—why would you oppose a provision of this nature which, it seems to me, offers the opportunity to get enforcement by other groups who are equally as interested in education as perhaps the Office of Education?

Would you comment on that?

Commissioner **Marland**. There are really two parts to your question, I think. One, the playing down or the disregard implied for critical comment either from GAO or from others concerning our performance so far. By no means do we intend to play down those words of counsel and criticisms. We are taking them very seriously. As Mr. Pottinger said, there were many features of the Washington Research project report which led us to discover irregularities. We profited by their counsel and acted upon it. Further, you may be certain that when the GAO report comes to hand that it will be taken very seriously. As I recall, the chairman noted this morning that it is a report suggesting ways to improve the administration of this law. We will take that counsel seriously.

As to the second part of your question having to do with the distinctions between H.R. 4847 and the proposed H.R. 2266, I will read if I may from a brief extract of the statement submitted to the Senate committee on this subject some days ago. Your question was as to the set-asides.

> Finally we feel the various set-asides contained in H.R. 4847 do little to further the purposes of the legislation. For example, 5 percent of the funds must be spent on educational television

Mr. **Hawkins**. You are going off on a tangent. The only set-aside I specifically referred to was the earmarking of 3 percent of the authorized funds for the reimbursement of attorney fees and suits under title 1 and title 6 of the Civil Rights Act in the 14th amendment. It seems to me this offers a particularly good opportunity to get enforcement which would reinforce the efforts of the Office of Education with its limited budget.

Mr. **Marland**. I will confine myself to that part of the set-asides you refer to. H.R. 4847 also provides—and I am again quoting from our earlier record—"A set-aside of Federal funds to support lawsuits against State and Federal officials." We strongly oppose this provision for several reasons. First, it would tend to throw into the Federal courts the entire burden of litigation in the areas specified. Many suits for enforcement of the 14th amendment with respect to operation of public schools are not litigated in State courts, particularly in the North and West.

Since this bill would provide funds for counsel fees only if litigation takes place in Federal courts, potential plaintiffs would have an incentive to sue in Federal court. Broadening the provision to include other courts would only compound administrative difficulties already inherent in the proposal. What constitutes, for example, "reasonable" attorneys' fees? What are—and I quote—"costs not otherwise reimbursed"? How would payments be controlled? Provisions would also tend to discourage negotiation and settlement of complaints since the defendant would not be liable for plaintiffs' counsel fees, as he may be under existing law.

I would comment further for the record that we do see the need for very strong monitoring and enforcement and surveillance of these programs, apart from providing funds for lawsuits. We hold that it is very important, for example, that there be logically established a surveillance of test programs through the advisory council which has been proven effective. We see it work now in the South. Mr. Pottinger and Mr. Brader, I am sure, will attest to the fact that some of our most useful imformation has come from advisory councils and citizens at large engaged in furthering this good effort.

I would continue on this as a principal means of enforcement in that there would be on the site at all times concerned and interested people, representatives of the poor and the minorities, engaged formally in advisory councils established by our requirements and in communication with appropriate officials so that enforcement can follow.

Mr. HAWKINS. Mr. Marland, there is no problem with extending that provision, 3 percent set-aside to State courts. I don't think anyone would argue with you that that makes any difference whatsoever, that merely by language it could be extended. As to the argument you raised about reasonable attorneys' fees, this is nothing unusual. It has been well defined. Certainly it is a provision which is in the Civil Rights Act already under two other titles. So it seems to me these are rather weak explanations of why you would oppose this provision.

Commissioner MARLAND. I would hold we are prepared to conduct our enforcement procedures with the machinery that we possess and the authority that this law would give the Commissioner of Education.

Mr. HAWKINS. You indicate in your statement that there are practical problems. You indicate there are only 32 education compliance officers in the regions available to the Office of Civil Rights to monitor the regulations onsite and to evaluate the information obtained.

In other words, you reason the argument in one way that you are without the resources to do the job and now you say that you prefer to do it that way but obviously you have already indicated you do not have the resources.

Commissioner MARLAND. You are referring to the circumstances of the $75 million appropriation of last summer which was hastily advanced in order to have it in effect by September. There were indeed many problems of surveillance and followup. If the proportions of the proposed legislation are realized it will be necessary for my office and for the Office for Civil Rights considerably to expend the resources for providing surveillance for this program. I would ask Mr. Pottinger to amplify that.

Mr. HAWKINS. I am satisfied with the answer. Let me ask one other question.

Mr. PUCINSKI. I wonder if we can come back. Mr. Veysey.

Mr. VEYSEY. Commissioner Marland, we grant the disability of segregated schools and indeed the need for desegregation of our schools. What can you give us in terms of the educational results coming out of such desegregation in terms of how effectively money allocated for that purpose produces hard educational improvement?

Commissioner MARLAND. I would offer first, Mr. Veysey, that the very fact of children attending schools, minority children with majority children, is in itself a favorable environment in which both children can learn effectively and proceed into the latter half of this century as a nation with a greater feeling of understanding and mutual good will among the races. Their very presence there adds to the corporate worth of our society and that is a very substantial piece of educational growth. Now as to the more specific opportunities for learning, we see in this proposed law opportunities to intensify beyond what we are now doing, opportunities for providing tutoring services for those children who are brought together and one or the other is less ready for the coming together in terms of his academic performance.

We see opportunities for providing extra help to the classroom teachers in order to facilitate the coming together of children who might now be strange to one another. We see the opportunities for introducing new resources in the way of counseling, counseling children in terms of a multiracial environment where perhaps black counselors work to help white children grow and vice versa. We see opportunities to reach into the home and bring together the families of children of different races, opportunities for the schools to reach out and provide new and imaginative ways of resolving racial differences both in spirit and in geography. There are some of the ways in which the environment for learning can increase and ways in which we can predict specific advantages to the learning rate for children, particularly those from minority groups who are performing less well today.

Mr. VEYSEY. I agree with you. I see all those opportunities for additional inputs to the legislation. Now, I am trying to look at the educational output on the other side, if we can do that for a moment, and I do not see in the bill the requirement of an effort to evaluate whether there is in fact educational output and improvement and achievement as a result of the various types of inputs that you just outlined.

Now, should there not be perhaps in the bill something in the criteria, something in a requirement on you that the evaluations of this type take place when, as we are now, in a time of shortage of educational funds?

Commissioner MARLAND. We do believe, Mr. Veysey, that there is a provision requiring adequate evaluation in this program. I am going to ask Mr. Saunders to respond to that if I may.

Mr. SAUNDERS. The bill does provide for evaluation both at the national and local level. One percent of the funds would be set aside to the Secretary for evaluation nationally. As a part of each district's project proposal it would have to show that proper evaluation was built into the project.

Mr. VEYSEY. Would shifting be contemplated of input efforts depending on the results of that evaluation?

Mr. SAUNDERS. This would have to be an annual exericse. Presumably, upon evaluation, necessary adjustments would have to be made in the program.

Mr. VEYSEY. Would it be your intention to do that?

Mr. SAUNDERS. I think our intention would be to require that evaluation take place. We could not very well establish in advance what had to be done.

Mr. VEYSEY. Let's assume that we would find after evaluation that some programs were very effective and some were totally ineffective. Then what would you do?

Commissioner MARLAND. This is precisely where the Office of Education comes into the picture. One of the things we learned in our exercise of last summer in the South was that the local school districts eagerly welcomed what I call technical assistance or, if you will, leadership. Mr. Brader and his associates were called throughout the land to help resolve the great issues in those communities.

Their presence therefore brought about change. Now, here is where—to respond to your question—we see the continuing opportunities for Federal leadership in the intent of this legislation. Where one exercise appears not to be working, rather than wait for the end of the year to run an evaluation that says "This does not work," or indeed at the end of the year we have found it does not, here is where through this program operating through the Office of Education we would be able to move about with technical resources, with skilled people saying "Here is what happened in Detroit and it is good, let's install it here and get it moving" or "here is what happened in this community that does not come off well. Do not try it here unless you have these safeguards." This is what I call leadership and technical assistance. We are prepared to provide that.

Mr. **Pucinski.** Mr. Badillo.

Mr. **Badillo.** I notice from the Comptroller General's report that no grants under this bill have been made as of November 13 to New York City. Have any grants been made at the present time?

Commissioner **Marland.** I am going to ask Mr. Brader to respond to that. The concentration of funds under this law was made in those States and communities where court orders had mandated corrective action and where desperate conditions existed, leading to the phrase, "emergency school assistance." In New York State I believe there have been no funds yet applied since there was as far as I know no legal requirement to desegregate then prevailing. I would have to ask Mr. Brader to amplify that.

Mr. **Brader.** There have been no grants made in the State of New York.

Mr. **Badillo.** Have any applications been made by the State of New York?

Mr. **Brader.** No.

Mr. **Badillo.** None at all?

Mr. **Brader.** None.

Mr. **Badillo.** Do you see any of the provisions of either H.R. 2266 or H.R. 4847 applying to the city of New York particularly?

Mr. **Brader.** Yes, I would certainly think so. As you know, under the emergency school assistance program, the regulations requiring the terminable aspect of the desegregation plan would had have to have been implemented between the years of September 1968 and September 1970.

This feature is not contemplated in either of the bills at this point. Now, basically, it would be a case of a school district, in an effort to reduce its racial isolation, designing a project proposal, again contemplating those types of educational activities that would support that desegregation effort and submitting that proposal based upon its need relative to its effort to desegregate.

Mr. **Badillo.** Certainly, from what you know of the Borough of Manhattan wouldn't you say there was a need to have a program to reduce racial isolation?

Mr. **Brader.** Yes, sir. I would certainly think so. Of course it would be reacting specifically to the proposed legislation. It would indeed allow a school district to move to the attendance center level in an effort to reduce that racial isolation that occurs in such attendance center. Therefore a project would be designed to establish and to make meaningful the integration activities within that specific attendance center.

Mr. **Badillo**. For example, in the Bronx there is an educational park, John F. Kennedy Educational Park, that is now being constructed that would seem to meet the purposes of at least H.R. 4847. Would that qualify for aid under H.R. 2266 also?

Mr. **Brader**. Construction assistance is not contemplated, as I understand in my study of the bill at this point. Of course, the educational park concept has been used in large urban cities. One of the real problems, however, is it does not pose immediate relief to some of the massive problems of racial isolation. Generally they are quite costly.

Mr. **Badillo**. That is why you need the emergency school aid, because they are quite costly as far as the cities are concerned and if that is one of the techniques which a nonurban center would use do you not think it would be wise to have it included under both bills?

Mr. **Brader**. My only reaction, sir, would again be one of timing. When one views site acquisition, contracting for land, specifications, it might run from 3 to 5 or longer in terms of years.

Commissioner **Marland**. We see the educational park as a brilliant promising long-term solution to racial segregation. We have to admit that the terms of this bill, which call for about a year and one half or 2 years of support, have to exclude large construction.

However, I would hold at least as Commissioner of Education, as I see this bill, that planning for such exercises could be supported, that once constructed, the implementation of added costs implied in carrying out the gathering of children, the gathering of a racially balanced faculty, all the community activities that would relate to increasing the understanding of this mode would be suitable projects to support in the context of this bill.

The only question that I think Mr. Brader is urging that you weigh is whether or not you can contemplate seriously the construction, the bricks and steel that go on for 2 to 5 years in creating a large building within terms of this bill. That we cannot do.

Mr. **Badillo**. You can have an educational park in one building. You can have a high school in three buildings. It takes just as long, it seems to me to build a 6,000-student high school as it would take to build a 6,000-student educational park.

Commissioner **Marland**. This is true, but the terms of our proposal do not allow for construction because there is simply not time.

Mr. **Badillo**. I do not understand why. You mean there will be no construction of anything; is that it?

Mr. **Brader**. That is right.

Mr. **Badillo**. So it is not just educational parks.

Commissioner **Marland**. That is right. If you have an educational park or a set of buildings in which, as they now are, you wish to create the spirit of an educational park in a community school, this would be a suitable function for this legislation. We would welcome this.

Mr. **Badillo**. Doesn't H.R. 4847 provide for help for local educational agencies to assist in the construction of educational parks?

Mr. **Saunders**. H.R. 4847 does provide for the construction of educational parks.

Mr. **Badillo**. Would you support that in H.R. 2266?

Mr. SAUNDERS. No, for this reason: that set-aside of 10 percent of the total, while it represents a sizable amount of money—$150 million out of the total—is meaningless in terms of meeting the emergency needs around the country that we are trying to deal with. That amount of money alone is not adequate to designate any single large school system in the country.

Why should we select one city to construct a building rather than use that money more effectively on immediate needs for desegregation? It is difficult to see how you would place that kind of priority on the use of the funds available.

Mr. PEYSER. Thank you very much. Commissioner, I have in front of me the two bills that are discussed, H.R. 2266 and H.R. 4847. Now, if you read the purpose of these bills they practically read identically. The purposes obviously of the both of these pieces of legislation are the same.

Now, I find it hard to understand or accept, and I am asking you this question, in H.R. 4847, this breaking up in percentages of money to be allocated of not less than 10 percent to an educational park, or not less than 5 percent for TV or not less than 3 percent for attorney's fees. It seems to me that if we have the crisis in this integration problem that we are talking about, that to tie these sums of money up where even the 3 percent figure is $45 million, that this is practically defeating the alleged purpose of both of these bills, both H.R. 4847 and H.R. 2266.

We get into the 5 percent for TV. I am as you know, very concerned over a major program in TV education not only in the problems of integration but in the problems of narcotics. In your opinion, does this breaking up in percentages, increase the effectiveness of a program to help integration or is it going to pull moneys away from it?

Commissioner MARLAND. I think Mr. Peyser would have to say that the specificity, the constraints, the limiting effects of these set-asides would remove a great deal of the freedom and creativity from the Office of Education to set about its business. Where one community might want to do one large set of tasks, another one, a different set of tasks, they would need their resources to do so.

Under H.R. 2266 the Secretary has the authority to examine a local education agency's entire desegregation plan to assess its comprehensiveness and the degree to which it will achieve its purpose, despite the fact that the district is originally requesting Federal assistance for a small piece of the overall plan.

In this way the Secretary can assure that only meaningful desegregation efforts receive support. I would add that under the proposed bill there can be these various kinds of commitments. If the local school board chooses to make those commitments, I think to constrain them and limit the funds accordingly removes their freedom to take initiative. I think we should emphasize the importance for initiative, good faith, responsibility, in local boards of education in carrying out the intent of this act.

Mr. PEYSER. I would also like to suggest, Commissioner, that the implementing of the enforcement which you mentioned before certainly be—while we can't count on it on a total level—be put down so if it is organized like PTA's or local groups, so it could be directionally involved in the overseeing and the coming back to your organization with complaint or whatever it may be, that you can be alerted, sort of flagged that there is a problem. I think we ought to utilize the public sector in this type of thing and I hope you agree with that concept.

Commissioner **Marland**. I do indeed. We are alert to this potential and have indeed built into our regulations for ESAP the establishment of responsible advisory committees representing all parts of this community, including significant representation from the minority community, to insure that their concerns are heard.

Mr. **Peyser**. My final comment on this is that I really feel that if the 4847 bill were to be the bill that is acted on, that 2 years from now we would be looking at a comptroller general's report that would be far more damning than the one we may be looking at now because of the built-in problems of trying to enforce and carry out those kind of regulations.

Thank you, Mr. Chairman.

Commissioner **Marland**. The point that Mr. Peyser made, I hasten to offer one added thought to the review of this subcommittee. We see in the proposed bill that we are offering components that we feel can be substantially satisfying to the authors of H.R. 4847. You will recall that their bill proposes the establishment of quality integrated schools. Now, in cities in which we are all familiar, such as New York City, Pittsburgh, or Chicago, if there were a singular kind of quality integrated school established under H.R. 4847, this would be a fine monumental exhibit.

But it does not address the problem of total separation of the races in many of our large cities. We feel that if the proponents of a local community plan wish to create, indeed as defined by the other bill, a quality integrated school as a model for that neighborhood, for that community, for that State this is well within their authority to do so. And the 20 percent set-aside which is authorized by H.R. 2266 would provide good opportunities for these models to be built quite specifically in line with the goals of H.R. 4847. We would not exclude them.

Mr. **Pucinski**. Mrs. Green.

Mrs. **Green**. Mr. Commissioner, first may I say that if anybody in this country is caught in the eye of the social hurricane you people at the table are. You have my full sympathy and my support for most of your recommendations.

Secondly, I thought your response to Mr. Veysey's questions was very excellent, and the goals which you outlined seem to me very overpowering. Therefore, as one member, I think it would be most unfortunate if either the legislative branch or the executive branch held any funds hostage in order to get another agency of the Government to act in a particular way. Elementary schools are so desperate today that we ought to get the funds out to them as quickly as possible.

Let me turn to a question based on Mr. Richardson's testimony and upon the philosophy of what we are trying to do. He said that racial isolation is inimical to the education of white children, as well as to the education of minority group children. That is slightly out of context, but I think that is his meaning.

While I do not reject that at this time, neither have I seen the evidence that really supports that. Therefore, I am asking you or any of the people in the Office of Education if you know of any studies that have ever been made, even Ph. D. dissertations that have really

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looked at an isolated school, a segregated school if any minority, Japanese, Chinese, Negro, Indian, where they could identify segregation itself as the factor that has been inimical to their education.

Commissioner **Marland**. Mrs. Green, I think that it is early in our history to find that there has been sufficient research and investigation to prove either side of that point. We are all familiar with the Coleman work that addressed this question, and we are also familiar that the Coleman work has had its critics and its detractors as any great scholarly effort does when it reaches to the very heart, as you say, of the social hurricane.

I cannot hold that because we will integrate a school that suddenly things will be different and more favorable for the boys and girls. I will say in terms of the ideals I hold as one of your counselors and one of your employees in Government that it is wrong for children to be forced to go to school separately because of their races.

There is an implicit worth in our society, an intrinsic worth in having children grow up together knowing each other, working together playing together and believing each other as whole people. I think it is just as important for white boys and girls from the favored suburbs, if you will, to find the world of another race and to learn to appreciate it and respect it and to get over the grave and increasing differences that we as a Nation now suffer with.

I think the only place for this to start is in the one large social instrument which we possess, namely the schools of our land, knowing full well that this is not going to be an easy course, knowing full well that there will be trials and troubles and that there will possibly be continuing disorder. We must live through this time until our young people can start a new adult generation believing in each other among the races.

Mrs. **Green**. Mr. Commissioner, I am not in disagreement with your noble overall objectives for an integrated society. I do have some questions about a society that places the total responsibility for integration on a particular institution. And it seems to me this is what we are doing in our society today. We are placing the total responsibility upon the schools.

Now let me go to a couple of specifics, and I would still hope that somebody in your office could point to a study that has been made. The only specific case I know of is a study of the Indian schools in the Klamath Reservation in Oregon and which is a preliminary report which shows the harm that has been done to the personality and character of the individuals because of the guaranteed income they have lived on and because they have been wards of the Government over a period of years. This has hurt them.

Another specific—Senators Mondale and Brooke were in Palo Alto holding hearings, and the people from the Nairobi School—which is a black school, a segregated school, and which is Government supported through OEO, not OE—testified that it was very harmful to place the minority student, black student, in a hostile situation. The question was raised whether this should not be an equal factor along with the desire for an integrated society.

Now, if Mr. Richardson's statement is correct that this racial isolation itself is inimical to their education, then I wonder what posture our Government is in because if my understanding is accurate, we are supporting a segregated black institution, and if you recall your testimony before the Committee on Higher Education the other day, we are supporting segregated Indian schools.

Now, it seems to me, we are saying segregation is bad and inimical to the education of minority groups. On the other hand we pursue it.

Commissioner MARLAND. I don't have a clean cut answer for you, Mrs. Green. I would have to say that the administration, the Government, indeed, may here and there be supporting an institution that is racially isolated. Indeed, the black colleges in which we are providing some assistance are known in quotation marks as "black colleges" although they are increasingly including white people in their enrollment. It is a fact that they will continue serving somewhat of an exclusive clientele.

However, I would say that we are starting at the beginning of this road here today and that we have a long way to go. We have a history, including the evidence that you have provided, of continuing isolation. And I am sure that other examples could be found equally undesirable. But I am saying we have to step into this stream somewhere, and we are asking that we step into it with this proposal.

Mrs. GREEN. But because of its overwhelming social importance to all of us, it seems to me it is also essential that we examine very carefully what we do before we start down a particular road and later find we have really made some bad mistakes.

If I have time, Mr. Chairman, I would like to turn to one specific in the President's message. Mr. Jennings has told me—I suppose he is referring to the Singleton plan—that each school system in the Nation, North, South, East and West, must move immediately toward a goal under which at each school white and Negro faculty members must be in the same proportion throughout the system.

Let me cite a particular case I know about here in one of the schools in the District of Columbia where a fourth grade youngster—the parents were Oregon residents; so they came to see me—by the middle of December had five substitute teachers. That was for a period of 3 or 4 months. I was told that there were available qualified white teachers for this school, and they could hire a permanent teacher for this fourth grade youngster and his class, but I suppose because of this so-called Singleton ruling that they were prohibited from hiring a permanent teacher who might have provided far superior education in a far more stable situation in which the children could learn. Instead, we had these four substitute teachers in that period of time.

Would you comment on this in terms of policies we adopted perhaps with the most noble purposes, though it is debatable. I fear that when we get down to the results we find great damage to the children that supposedly we were trying to help.

Commissioner MARLAND. I would like to respond to that briefly and then ask Mr. Pottinger to answer.

One of the reasons that we are pressing for early consideration and action on this bill, Mrs. Green, is that there must be a great deal of time devoted at the local level and at the Office of Education level to insuring against the irregularities and inequities that can creep into responses to a legal mandate. This could be one of them. Irregularities have risen to haunt us, as you know, in terms of the actions taken in absolute good faith last summer.

Mr. POTTINGER. Mrs. Green, the Singleton requirement would not, if properly implemented and enforced, lead to the regrettable result you have described in Washington, D.C. In fact, I might comment that I do not believe that it would have been the Singleton rule that was even being implemented in Washington during this past year, although we could check on that.

With regard to the implementation of Singleton in those districts where faculties have not been desegregated, the rule would have permanent as well as substitute teachers desegregated without regard to race, so that a turnover of substitute teachers for a given class should not occur because of that rule.

Secondly, I would add that we have tried wherever possible, wherever it was necessary, to require midterm desegregation of faculty, so that we do so at the end of grading periods or at times that are not disruptive. In fact, in most cases it has not been necessary to undertake major disruptive transfers and assignments of teachers during the school year.

Finally, I would say we are presently in the process of negotiating with school districts Singleton plans or segregation of faculty plans which will go in effect in many cases at the beginning of the next school year. Particularly this is the case in those districts that have not previously had Singleton provisions built into their plans. That was in 1968 and 1969.

Mrs. GREEN. Could you explain to me——

Mr. PUCINSKI. Could we come back to that. Mr. Quie?

Mr. QUIE. Mr. Commissioner, I appreciate your statement and your efforts on the emergency school aid bill. I would first like to express a little different point of view from that you have on an educational park as some brilliant venture. I look at this as a way of taking the student away from the community. The Mondale bill covers preschool children as well as elementary and high school children. If an educational park was one single high school for the entire city maybe it would have value. But if we found out anything from Headstart it was that the parents have to be closely related to this program in order that it be effective. Where they attempted to run a Headstart preschool program without parent involvement, it was of little benefit.

The same thing is true of elementary schools. Many people are talking of making elementary schools smaller and closer to the community. Doesn't the educational park operate on the assumption that it is unwise to leave children close to their parents in their community but we ought to take them away and isolate them? If we go to the educational park, why not go to the kibbutz and give them residential facilities so we can truly isolate them from the horrible influence of their parents?

Commissioner MARLAND. I have wrestled with this question as a school administrator. An educational park in its conventional form does indeed include the whole range of children, from perhaps preprimary through high school.

Mr. QUIE. It is specifically listed in the Mondale bill.

Commissioner MARLAND. This is true. That is one definition and it is a respected one. My own bias in this direction, I must admit, has been in helping to develop the educational park theme for older children, perhaps junior high school through high school. I do acknowledge the need for families to be closely engaged with their children and their schools. I think one of the soft spots at this time in our history is the lack of engagement of families with children, and I speak not only of children of disadvantaged but of all kinds of families. I look for ways to resolve this, through the Office of Education and the programs that we advance.

As for the question of removing a child from his neighborhood for the benefits allegedly lying in a more remote school and in a balanced racial environment, one could argue both sides of this. I would hold that it is not an insurmountable problem. I have also—and I draw upon my own experience—engaged somewhat in this where, for example, a school serving largely a white community was expanded by means of mobile classroom units by about 25 or 30 percent of its capacity. Accordingly youngsters from some distance away, where they are not so remote as to be unfeasible, were transported by bus to that school. These were black children. Parents did indeed engage with their children in that school. They were free to use the buses and we welcomed them on the buses. Parents took an enlarged interest in seeing to it that the transition of their children from that neighborhood to a different neighborhood was successful.

I can say with some confidence that this can work, Mr. Quie. It is not easy. It takes elaborate and extensive planning at the local level. It should be done at the local level, and only there can it have promise, but it can be done. Removing the child from his own environment, and thereby his family does not rule out the opportunities for racial desegregation.

Mr. QUIE. Wouldn't there be less local planning and local involvement if the Federal Government was going to fund a substantial portion of the educational parks? Any time you get a free gift, you are not as careful how you spend it.

Commissioner MARLAND. This is probably our most specific argument against the proposal of H.R. 4847, in that there would be freedom on the part of the local district to do what it chooses to do. In some cases the initial planning and development design of an educational park concept may be very suitable in one community but not in another. The conditions of the set-asides mandating certain proportions of the money to be used for certain things again would defeat this purpose.

We would hold that, echoing your own words, none of this planning is likely to come off, Mr. Quie, unless it is at the local level—unless it is engaged in by the people affected by it, and engaged in spontaneously and heartily by the local board of education and the administration and the faculty.

For these purposes, our funds are being mounted, and I would look at this somewhat differently from formula grants. I think your charge is that perhaps when Federal money arrives under a formula grant in a community it is treated with less respect than that which is raised locally in taxes. On the other hand, when a grant is made in light of a competitive proposal, which sugstantially is the case under this bill, that is quite a substantial difference in the way in which a receiving community behaves.

They have to make this work in terms of what they have created, not what Washington has advanced.

Mr. QUIE. You are talking about the administration bill rather than the Mondale bill. It would be strictly categorical. I notice also the amount set aside for educational television. I find in that Senate bill there is no requirement that this help in integration other than that they must employ members of minority groups in responsible positions of development and production, and administrative staffs of the educational television.

So there is quite a good deal of that legislation which is aimed at merely improving education quality and is duplicating other legislation.

Commissioner MARLAND. We raised that same objection and have recorded your objection with the Senate subcommittee on the theme you expressed. However, we would also say that a television program clearly aimed at bringing about a better understanding among the races would be a viable project under H.R. 2266. It could be reviewed and found acceptable, provided it met the criteria of our programing. But we would not say that a certain percentage of the money should and must be used for that purpose.

Mr. QUIE. I look at that with a good deal of reservation. I know the tendency in some schools would be to leave the children in an isolated situation to watch integrated television, and that is an easy way out for them. I don't think it makes much sense.

Commissioner MARLAND. They would have to prove their point with men like Pottinger and Brader before they got by with such a proposal.

Mr. PUCINSKI. Mr. Commissioner, yesterday there was testimony by Mrs. Edelman from the Washington Task Force pointing out under 4847 local education agencies must establish or maintain established education quality integrated schools in order to receive assistance. But under H.R. 2266 a district may be funded if it reduces to an undefined level minority group isolation in one or more minority group school or if it reduces, again to an undefined level, total number of minority group children in its isolated schools.

They said this invites tokenism. As I read the Mondale bill, the Mondale bill defines a segregated school or, rather, an integrated school means a school with a student body containing a substantial proportion of children from educational advantaged background which is substantially representative of the minority group and nonminority group student population local educational agency in which it is located.

I am wondering how you, as the Commissioner of Education, and the Secretary could really interpret the language in the Mondale bill. I am under the impression that the criteria established in the bill reported out by this committee last year does give a greater assurance of integrated schools. Would you wish to comment on the language "Substantial" and what it means to you, and then what criteria you would use if 2266 were enacted into law for determining whether or not a school qualifies?

Commissioner MARLAND. I would say that the degree of specificity implied in H.R. 4847 could be difficult to administer. I would find it difficult, for example, to determine what substantial means in Washington, D.C., as against St. Paul or Minneapolis.

I would find it difficult to say what substantial means in terms of faculty balance in Atlanta as against, let us say, New York City.

On the other hand, I would say that H.R. 2266 leaves a great deal of discretion, creativity, and initiative to the local school system to solve its problems. It places thrust to a substantial degree in the process of developing a creative plan unique to that city and having that plan reviewed by the Office of Education and the Secretary before it is funded.

The needs of Phoenix, Ariz., in terms of bringing about desegregation are different from those of Poughkeepsie, N.Y. And yet each respective board of education would be dedicated to solving its problem in its context and subject to review of the Office and on a systemwide basis or in large segments of that community as distinct from the creation of a singular type of integrated quality school.

Mr. **Pucinski**. Now the difference, as I see it, between the two bills—fundamental difference between the so-called Mondale bill and the administration bill—and I am very pleased that the administration has accepted the amendments that were offered in our committee last year—the difference is that the administration bill would assure literally every community in this country that is undertaking a program of intergration, whether it is through a court order or whether it is through some action by HEW or the Justice Department, or whether it is on a voluntary plan—any school system in this country undertaking a program of integrating its schools within those three broad categories would be assured of some financial help to carry out that work. Whereas under the Mondale bill, they would select a chosen few districts around the country. They would be funded and the question first: Is this a correct assumption? Is this a basic difference between the two bills?

Commissioner **Marland**. You have described the difference, substantially. I would like Mr. Saunders to amplify his opinion of that difference as you cited it.

Mr. **Saunders**. We would agree with that description. I would also like to comment on the suggestion that has been made that the committee bill, or the administration bill, H.R. 2266, does not establish adequate standards. Section 7(a)(2) of the bill requires highest priority be given to projects which effect the greatest degree of desegregation. This language is intended to concentrate funds where they are most needed.

We feel to require racial balance in participating schools as a condition of receiving funds, as under the Mondale bill, would prevent school districts from undertaking substantial reductions in racial isolation throughout the district. And the important thing to do is to promote districtwide planning to meet that district's need.

Mr. **Hawkins**. On the assumption that you draw, that one bill does not provide—that is, H.R. 4847—does not provide for any distribution of the funds among the States, may I call to your attention section 4 of the bill, on page 4, which in a sense approaches the problem the same as the provision which we inserted in the so-called administration bill? And I think the assumption that you drew is not exactly correct, if you will take into consideration section 4 of H.R. 4847. But it ties it to a criteria, whether or not in fact integration is actually being accomplished, whereas, in the administration bill only the definition of desegregation allows the allocation of or the apportionment of the money, which is, I think you must concede—or Mr. Marland should address himself to this, to what is his definition of a desegregating district.

Does a busload of black students moved into a school mean that that school is desegregating? To what extent must that desegregation take place before it is actually so defined? It seems to me it is quite as broad, possibly more indefinite, than his answer to your question of what is integration. It seems to me it goes both ways.

Mr. Pucinski. I think the question is a very valid question, one I hope the Commissioner will answer. But I do believe that if I look at the two bills, the bill reported out by the committee did impose upon the Secretary the responsibility to look at the affected school districts' need for assistance and the plan for desegregation or integration.

And, of course, the Secretary has testified all morning you have different situations all over the country. Each district has its own problems.

Now, as I look at the Mondale bill, this was set up as perhaps S. 70 or 80, chosen school districts around the country will get a substantial amount of money, and there is no necessity or even requirement in the Mondale bill that all the schools in that particular district must be incorporated into the program.

On page 6 of the Mondale bill, in section 5(a) it says, "The Commissioner is authorized to make a grant to or contract with a local educational agency only if, in accordance with certain criteria established by regulation, he determines:

(a) That the local educational agency has adopted a plan for establishment or maintenance of one or more stable, "quality integrated schools." And I submit if we are talking about tokenism, tokenism is really in the Mondale bill. Because, while the needs are all over the country, the Mondale bill would support a substantial amount of money to a chosen few districts.

With that, I wonder if the Commissioner would like to answer the question of Mr. Hawkins as to how you define a desegregating school district, one that would meet your criteria.

Commissioner Marland. I will respond briefly and ask Mr. Saunders to respond further to the technical details that Mr. Hawkins sought to pursue.

I agree that, as the chairman stated, under H.R. 4847 it would be possible for a community to fulfill the terms of the proposal with a single school that might become a model to many parts of the community as a singular place where goodness exists while throughout the remainder of the city there continues to be segregation and isolation.

I would hold this is not the intent. Quite the contrary; we are proposing that a community must show good faith in acting in the entirety of the segregation problem. It does not mean that the entire city must be desegregated all of a piece, but it must deal with the large issue of that city and not with isolated monumental solutions that can be counterproductive to what we are trying to do.

As to Mr. Hawkins' questions, I would ask Mr. Saunders to follow on.

Mr. Saunders. I would only add that the whole thrust of the H.R. 2266 is to encourage the applicant district to make the maximum possible effort to desegregate its system, whereas H.R. 4847 has no incentives whatsoever to districtwide planning. It simply says that schools within a district will be funded if they reach the racial balance of the entire district. This arbitrary formula for racial balance, we feel, has little to do with the question of stable quality integrated education, which is the concept which we support.

Mr. Pucinski. In other words, isn't it correct that a school district could continue flagrantly ignoring any needs and, as long as they select schools within that district that maintain stable quality integrated concepts, those schools in that district can be funded under this bill. But there is no impetus in this bill to try and prod the others into taking the same action; is there?

Mr. **Saunders**. That is right. The normal thing to do would be, under the approach of H.R. 4847, for a school district to come in and pick up some quick money for fringe-area schools which meet that arbitrary standard of racial balance. There would not be any incentive for them to do anything about the most difficult part of their problems.

Mr. **Pucinski**. Mrs. Edelman made a suggestion yesterday that made a lot of sense to me, and perhaps you will find no difficulty with it either. In the committee bill or the administration bill, on page 11, we have in section 8 assurances—and we have some 12 assurances—"Applications submitted for approval under Section 7 shall contain such information as the Secretary may prescribe and shall contain assurances that——" and then they list 12 assurances of things that must be done.

They suggested that these ought to be conditions precedent to any funding; and if any of these conditions are not met, or if they fail to meet the conditions that have been stipulated in the provision, that school district would be subject to loss of its funding.

In other words, the main thrust of her suggestion is that these become actual conditions precedent rather than mere assurances.

I find no difficulty with that suggestion. I was wondering what your thinking might be.

Commissioner **Marland**. I would respond in general and ask Mr. Brader who has actually administered this type of surveillance to amplify on my comments.

The assurances are precedent to the approval of a grant to a program under our proposal. As to the existence and the presence of these assurances—in fact this again is a function of time. You well know many of the problems of administering this program in 30 days last summer had to do with moving swiftly to get schools on in a rational and nonviolent way in September. But as for the future, which is what we are talking about here, I would ask Mr. Brader to describe the administrative process which would apply in the submission of a proposal, our approval of it, and the subsequent funding of it.

Mr. **Brader**. We require in the administration of this program which we have reported on previously to you, that such assurances should be forwarded, and do indeed accompany the application proposal.

Possibly Mr. Pottinger could be a bit more responsive to that.

Mr. **Pucinski**. The main point of her argument was that, assuming they submit an application, make these assurances, they are funded and then they do not carry out the assurances, what action is taken? She suggested that the funds be cut off forthwith to make sure that there is no deception; no whatever you want to call it.

Mr. **Pottinger**. I think that the effect of that suggestion is to change the compliance mechanism that would be available to use to terminate and not change, as I understand your description of it, the actual substance of what the school district would have to do.

The only caution I would raise at all about it—and it is not to argue with the suggestion, but let us walk into it with our eyes open—is the suggestion that if the grant is voidable ab initio, from the start, because of this procedure, to maintain the integrity of that condition, it means that the Government will have to have some mechanism for retrieving funds that have already been spent.

If the committee and the Congress decide it wants to do that, I am not sure what that mechanism would be. Certainly we in the Office for Civil Rights would not be interested in attaching school buildings and selling them at auction.

Mr. **Pucinski**. We will then receive, as I get it, Mr. Commissioner—and Mr. Ford mentioned it earlier—at some later date an analysis of yours of the GAO report. And I would appreciate if you would give us some suggestions on how this legislation can be strengthened to indeed avoid some of the things that the report might have pointed out.

I want to make one final footnote for the record, so it is clear. I do not share the enthusiasm for educational parks of some of the editors. We have had some rather substantial testimony during our hearings last year on the educational needs of the seventies, and there are those who make out an excellent case that in their very bigness they invite all kinds of trouble.

In this era of turmoil, even a small handful of people can tie up the whole institution as they have tied up Berkeley and Columbia University and University of Chicago. And so there are those who have testified before our committee to move very cautiously in consideration of educational parks. I am aware of the arguments pro and con, but, speaking only for myself, I will opt out for smaller and more effective schools of good quality education.

Mr. **Bell**. Commissioner Marland, I think you probably answered this previously to some extent, but I thought you might want to elaborate. Much has been made of the deficiencies of the $75 million program with which considerable accomplishments were made in school desegregation this fall. I am sure there are numerous examples of successful use of these emergency funds, some of which you just discussed.

Would you like to respond for the record on some examples it has provided?

Commissioner **Marland**. I might add, while I have expressly this morning acknowledged that action by a large governmental agency in attempting to comply suddenly with a new and substantial law did bring with it the hazards and risks of some error, I would hold, unless the record shows anything to the contrary, that as the Secretary stated in his testimony this has been a very successful program an historic program and one that has brought about substantial change and restoration of decency in terms of the lives of young people in our 11 Southern States to a very large degree.

As cited by Mr. Pottinger, the statistics on that are self-evident. As for specific success activities, I could list a large number and perhaps I will ask Mr. Bader to speak of one or two. But I have here reports from superintendents of schools in the regional area of Georgia, Florida, Alabama, and other States in that region such as, for example, in Butler County, Ala., total enrollment of 4,100 boys and girls, 1,767 of them white, 2,400 black—here there was $77,000 invested and soberly put to work on the kind of tasks—not necessarily bright, colorful tasks that stand out radiantly—but they brought community programs into their schools, engaging the multiracial context of that community.

They provided special pupil services, such as a part-time secretary, a bookkeeper, a project director for the program, two visiting teachers to go to homes, a guidance counsellor, several aides to teachers to provide tutoring assistance for boys and girls in a newly integrated situation. The school is operating on a unitary system.

In Escambia County, Fla., a larger program was funded, roughly at the level of one quarter of a million dollars. Again, pupil personnel services were supported, with social workers engaged to work across the areas as between parts of the community that were isolated theretofore from each other to work out the newly zoned arrangement for attendance areas. Curriculum revision was carried out in that community to provide personnel and materials, equipment and support services to develop model programs to meet individual needs of children, especially those being brought into a newly integrated environment.

In-service programs for the teachers responding to the new curriculum were carried out. Comprehensive planning, including community groups, was undertaken to provide new lines of school boundaries in that community and, presumably, to provide for arrangements for moving children in consistency with those boundaries.

Palm Beach County, Fla., $260,000. Similar activities were carried out. Ashtown, Ark., curriculum coordinator engaged to provide new materials, particularly for the introduction of boys and girls from minority groups into the school system.

We have many success stories. And, again, I would have to say the real success lies in the evidence of the number of boys and girls that have successfully been engaged with each other now in a new nonsegregated environment. The program, by and large, has been kept low key. It has been done without a great deal of fanfare, and it has been done by sober administrators and teachers working with their community. And the remarkable thing about this, as the Secretary has noted, is it was done substantially in peace during the month of September.

Mr. Bell. Thank you, Mr. Marland. I am somewhat reminded of the days when we were working on the first Elementary and Secondary Education Act. Some of us were here, including the chairman, to help draw it up and write it. I noted how, shortly after it had passed and become law, there were so many complaints about how poorly it was run—all the problems entailed, all the difficulties in the area of civil rights, all the things that were wrong about it.

And I am wondering why some of those people that are so critical of this would not have thrown up their hands and said, "Let us no longer support the Elementary and Secondary Education Act." But none of those people who were so critical at that time are saying that. And some who are so critical of this act certainly did not want to throw up their hands when it came to the Secondary and Elementary Education Act, which had more problems and more difficulties than this has had.

The $75 million was administered, as you say, during a period of stress and in a short time to develop and properly administer a program. Would you prefer though, Commissioner Marland, to have more monitors this time if you had your choice?

Commissioner Marland. Indeed we would. I have already been engaged in conversations with Mr. Brader and with Dr. Bell who will be the principal officer charged with administering this program as deputy for school systems. These men are already laying on the preliminary groundwork that would respond to your question as to numbers of additional personnel we will need to develop, not only engage, but train, to build up sensitivities necessary to carry out the will of Congress in administering this bill.

We will be ready to act promptly upon its passage, but we will need time to engage people, train them, and prepare to deploy them for the monitoring effort that must follow.

Mr. BELL. I do agree with you and others who have said integration is a very important part of our program, and it is very vital that we do this for the general good of the schools in America. However, I can point out relative to Mrs. Green's question, a fairly illustrative example of where that did not seem to be quite so necessary.

In the Baldwin Hills school area of Los Angeles, there is an area of affluent black people, and they have a school there where the record academically is—if not the highest in the Los Angeles school system, it is close to the highest. Ninety percent of the children in that school are black. When they wanted to bring in children, bus children in from other areas of less affluent, more deprived, there was objection to this.

Commissioner MARLAND. I would have to hold that is equally wrong.

Mr. BELL. I would agree. I would say it is equally wrong. However, I gave an example of Mrs. Green's query.

Mr. FORD. Mr. Commissioner, I think that the majority of this committee agrees with your exposé of what you view to be the purpose of this kind of legislation. I think the majority of the committee not only agrees with that as a principle, but has a track record indicating its willingness to support legislation aimed in this direction.

When Mrs. Green was questioning you, you mentioned the Coleman report, and I am sorry you did not amplify the aspect of the Coleman report that does not attempt to, in the very narrow way that she put the question to you, relate educational quality to the single factor of race. It talks about the socioeconomic mix that is necessary to produce the best possible learning circumstances for all children.

Your predecessor testified before this committee that he agreed with those educators who recognized that the urbanization of this country at the expense of the small town where the kids from both sides of the track went to school together has produced new problems to be dealt with. This legislation, though it addresses itself specifically to a form of measurement using race as a way of measuring the kind of people to whom the legislation is addressed, does not limit itself however to the single question of that racial measurement in setting up the programs.

For example, one of the advantages I see in Mr. Hawkins' bill, 4847, is that when it uses, on page 27, the word "substantial" it uses it in two ways. It says that:

> In determining who will get this money, you would determine that the school had a student body containing a substantial proportion of children from educationally advantaged background. This without regard to their race, which is substantially representative of the minority group and nonminority group student population of the local education agency.

So you have both factors cranked in. The racial factors combined with the other factors that the Coleman report really put its finger on as the essence of what an integrated school situation was, as distinguished from a desegregated. I suspect that there is a difference that is more than just semantics in the way people use integration and desegregation. I think they mean different things to people. They are not synonymous at all, as we once thought they might be.

The thrust of H.R. 4847 is that it talks in positive sense of creating this integrated or this mix of people in the educational experience.

Mrs. **Green**. Would my colleague yield?

Mr. **Ford**. Might I finish? The word "substantial," I don't think is one that upsets lawyers too much, because you will find all over the place in administrative practices, the word "substantial." You will find substantial compliance, substantial adherence. The word is used frequently. It calls for the exercise of discretion on the part of you as representative of the Secretary, but it does not give you free license to just put any definition on it that you want. It would have to be substantial as viewed by reasonable men, given the circumstances of that particular time and place. And that is why it is an artful word used in the law that provides a great deal of flexibility and yet would permit a court to step in and say, "Now obviously this is not a substantial compliance," or "obviously this is not a substantial mix." So you really would be operating without a rigid diagram to follow, but you would be operating really under the admonition to be a reasonable man in the administration of the program. And in fact you would have what we would consider, many of us, to be a very desirable degree of flexibility to administer this legislation.

But I think that people could feel assured that if they disagreed with you on the exercise of that, that they could seek redress in the court, and the court would have something to chew on if that word "substantial" is in there. If the word "substantial" is not there, I am afraid there would not be much point in taking you to court to question the exercise of your judgment.

I am not advocating that we expose you to multitudes of lawsuits, but I am suggesting that on the basis of our experience on this committee, this legislation will be effective to the degree that there is public confidence and confidence resident in the people who are the quiets, if you please, of the particular legislation. If they have confidence that there is a remedy available here, that is enough without ever using it.

I yield to——

Mrs. **Green**. I want to comment on the Coleman report. I agree with the gentleman from Michigan, when I asked the question I obviously was not referring to the Coleman report, because I do not think that it isolates racial isolation as the one factor inimical to education. There are too many other socioeconomic factors.

So my question is: Is there any other study of any kind? We hear repeatedly, over and over, that racial isolation itself has been responsible for poor education. It seems to me that the terrible quality of the schools in the South for a long period of time was due to a number of reasons. One of the many reasons for the economic policy there was the desire for cheap labor; a lot of other factors were also significant, not just the factor of racial isolation. If we had had in the South a high quality of education, I wonder if racial isolation would indeed receive the spotlight.

Commissioner **Marland**. I had to admit that the only study I knew that even bordered on responding to that was the Coleman study. I am certain there are others, Mrs. Green.

A very brief response to Mr. Ford's question on the terminology surrounding the other bill having to do with "substantial." I do not in any way question that use. The chairman asked me whether I felt that administratively it was meaningful, and I said it would be hard to develop uniform administrative practices that had universal application. But I do appreciate also that the word "substantial" has useful meaning to an administrator in carrying out the intent of either bill.

It is not the word "substantial" or indeed the degree of freedom and responsibility implicit in the other bill that I object to. It is only the very large question that H.R. 4847 apparently permits the community to fulfill its commitment to bring the races together by having a single, or perhaps two or perhaps three, sites where indeed substantial integration has occurred.

I would have to say this is a very easy matter, and it does not bite the bullet.

Mr. **Ford**. I cannot agree with you, and Senator Mondale does not agree with you. He sent me a copy of a letter he sent to you after you made this same assertion in front of the Senate committee the other day. If you look at page 3 of the administration bill it talks about financing a district which has adopted a plan and is prepared to implement a plan to eliminate or reduce racial isolation in one or more of the racially isolated schools in the school district of such agency. That is one way they can question. They do not have to eliminate it. They can eliminate it or reduce it. Not reduce it substantially, just reduce it. You might try to read substantially in there, but you are not going to be able to sustain that kind of a rule because it is legislatively not given to you.

While, on the other hand, Mr. Hawkins' bill 4847 and the Mondale bill provided, on page 23 "In determining whether to make a grant or contract under section 5, or in fixing the amount thereof, the Commissioner shall give priority to (a), in case applications submitted under section 5(a), applications from local educational agencies which place the largest numbers and proportions of minority group students in stable quality integrated schools"—now, when you read this language together with the requirement that there must be the integration of one or more schools, it begins to show you what the picture is that you are admonished against giving somebody money for a token project.

And it has been suggested here, I think again erroneously, by a member, one of the people with you, that the proportions set in this bill apply to the individual schools, and they do not. The language clearly indicates that the proportion is to qualify a school district and that the proportion need not be found in any specific school within that district.

You would qualify the entire city of Pittsburgh on the basis of the number of minority children in the whole school district, not the number in any given school. So there would be no need for the plan to be identified for the specific school, nor would you go around picking out the ones that fit this proportion within the city of Pittsburgh.

I think if you take all three of these concepts and put them together you will discover that it requires a greater degree of performance at the local level to in fact integrate the educational opportunities under H.R. 4847 than it does the administration bill, because it provides a totality of effort as distinguished from the bare desegregation sort of admonition.

Mr. HAWKINS. I was wondering, Mr. Marland, what is your comment on the point just raised by Mr. Ford, because that is what I was going to ask you. Mr. Ford gave the comparison of that approach, the districtwide approach, in both bills and drew the conclusion that H.R. 4847 was even stronger, would give you stronger powers.

What is your reaction to his comment? Do you agree or disagree or what is your interpretation of that provision in comparison of H.R. 4847 with H.R. 2266?

Commissioner MARLAND. I would have to hold to my earlier position and say I feel that the school system and the children of the country are not as well served by H.R. 4847.

Particularly, Mr. Ford has described a condition in which the community might set about a systemwide desegregation program conceivably under H.R. 4847, but indeed H.R. 4847 does not require it to do so. As for the degree of freedom and the degree of authority vested in the Commissioner of Education. I would have to say that the categorical set-asides, even at community level or at school district level, I would not find to be an increased level of authority for the administration of this bill.

I would find it somewhat of a handicap to free schools to create good programs with the implicit feature of so much for attorneys' fees, so much for television, so much for one or another component part of a grant. I think this would constrain and would act in ways contrary to what Congress's broad intent is in offering this bill; namely, to bring about system-wide action.

I think that I am, in the context of H.R. 2266, in a position to review sharply the proposals made by a given community as to how they intend to go about meeting the will of Congress.

Mr. HAWKINS. I don't think you are considering the specific language that was pointed out to you when the chairman, a few minutes ago, indicated that H.R. 4847 was deficient because it could be confirmed to one school and it was not necessarily districtwide in that the districtwide pattern might not even be a factor.

You seemed to agree with him, and now when the language is specifically pointed out to you that this eligibility is practically the same language in both bills, that it is only under the criteria section that you have the authority to take in the comprehensive districtwide approach, you seem to still say that the administration bill is stronger. But then you do not confine yourself to that revision. You go into the broader philosophical question of the approach.

I don't quite follow you. I don't think you are intending to confuse us, but I do get confused when it seems that you agreed that under the so-called Mondale approach, or H.R. 4847, it would be possible to reduce racial isolation in one school and still have that district qualify.

And we have indicated to you that would not be possible. Now, we don't agree on the language in this vital issue. If either bill does not spell it out, I think that it certainly should be improved in whichever bill is considered by this committee. But I would like to get some help from you as to how we can improve it.

Commissioner MARLAND. As we read the bill, it does permit the community to have a singular, carefully designed—and indeed commendable quality—integrated school at the expense of all other parts of the community. If we are misreading the bill and if this is not the case, we should be corrected. But this is how we read it.

Mr. Pucinski. There is no question in my mind, the language in section 5(a), on page 8 of the Mondale bill, is as clear as day. "The local educational agency has adopted a plan for establishment or maintenance of one or more stable, quality, integrated schools."

Now, with all due respect to the language on page 23, which is perhaps a further qualifying or clarifying language, it sets up a further criterion, but you cannot get away from the fact that they permit one school to qualify as a district in the Mondale bill, whereas in the administration bill we give top priority to schools under a court order.

Now you presume schools under a court order are indeed schools that have a districtwide plan or the court order would not have been issued. Then they give the second criterion; schools that are under a HEW or Justice Department plan. There again the agency has looked at the totality of the school district. And finally we give priority to the schools solitarily trying to provide a program.

So it seems to me with due respect to those arguing for the Mondale bill, if you are trying to help the largest number of children the Mondale bill won't do it.

Mr. Ford. The point Mr. Hawkins and I make is, there is not that much difference between them in terms of the thrust. You have to put page 5 of both bills together with the latter language, and the criteria to get the idea of what he is supposed to do. The difference is the Mondale bill gives him a legal measuring stick against which to work, and the administration bill has no standard for what the word "reduce" means. There is no standard of when you have reduced racial isolation to that degree that qualifies you. Is it 1 percent, 10 percent, 20 percent; one person or 500.

It would be purely a subjective decision by the Commissioner with no clear guidelines, and I don't think any lawyer is going to urge that that is an enforceable way to legislate.

Mr. Pucinski. Perhaps the Commissioner would like to briefly give us the genesis of this whole proposal. If my colleagues will remember this legislation and this proposal was developed by the administration because a substantial number of school districts found themselves under a court order where the courts have said, "Your delaying tactics have all run out. All time has expired. You have to do thus and so forthwith." And so there were great problems involved in trying to implement the court order.

The administration came before this committee with a bill that would have provided Federal assistance to schools under court order and suggested that we count the children twice in schools under court order because presumably these schools had the most urgent and pressing problems. And there was no question as to the definition or scope or standards or criteria. The court had spoken and they had to implement the court order.

Now, we in this committee, looking at that situation, said the court ordered schools are a temporary phenomena because sooner or later other school districts are going to come under either HEW-approved plans or Justice Department-approved plans, and then we said, "But even with all due respect to those, there is a third category of schools that are voluntarily doing it: Evanston, Ill.; White Plains. N.Y.;

Berkeley, Calif. And we listed a whole category or constellation of communities that were voluntarily entering into programs.

So the committee then wrote into this bill the provisions for extending this help to all schools that wanted to try to overcome the problems of racial isolation. That was the background of this legislation, and that is how the committee evolved.

Now we got a great deal of cooperation from the Department and, as I said earlier in my remarks, I am grateful to the Department that they accepted many of the suggestions we made here to try and improve this legislation.

Is that correct, Commissioner?

Commissioner MARLAND. That is substantially correct.

Mr. PUCINSKI. Am I stating it correctly?

Commissioner MARLAND. You are.

Mr. FORD. No one argues with that, except we had yesterday before the committee three of the people I number among those that I would listen to most carefully in discussing the mechanics of enforcing individual civil rights.

There was a particularly great deal of expertise accumulated from the table yesterday, and if these people show that kind of concern as well as others who talked to me last night, for this difference, I would just commend the Commissioner and his people to go back to the drawing board and look at both of these and see if this concern is something that we cannot meet. Because this bill is not going to pass if there is an accumulation of that kind of concern among the people for whom they speak.

When I get in this field, I defer to people who have devoted their life to it and have been on the firing line. I have to admit my experience with it is limited to being a legislator and not out there.

Mr. PUCINSKI. I wonder if I can get Mr. Pottinger's views—if you will yield—on the question that, while it is true that you have some school districts that have been dragged into this thing biting, screaming, and shouting and have been brought in by court orders and are giving only token and lip service to court orders and doing only what they absolutely have to do—and there is no question the Department is prodding them all along to do more—but we do have in this country many communities that are voluntarily trying to deal with this problem and, with all due respect to the witnesses that appeared yesterday, the fact of the matter is that surely any legislation that we put out of this committee to deal with this problem ought to give those schools that are voluntarily trying to deal with this problem some degree of assistance.

I have a feeling that some of these voluntary schools have done measurably better than the compulsory systems that have been imposed by court orders otherwise.

Is that a reasonably fair statement?

Mr. POTTINGER. I think it is a fair statement, and I think it goes to the heart of the question that Congressman Ford and the Commissioner have been discussing. The problem—I think we have agreed that whatever plan is accepted it should have a real impact on reducing or eliminating racial isolation—the question that has arisen with regard to substantiality defined as racial balance presents serious problems to us in the enforcement field.

Let me try to illustrate that problem. First of all, what is "substantial" differs very radically from one district to the next. The

State of Georgia is under a court order which defines substantial as between 50 percent and 150 percent of racial balance. I do not know whether the Congress or we in the administration would agree on that, either way.

Second, with regard to the magic of balance, you see the disparity of imbalance in district to district creates different results. For instance, if a district is 80 percent white and 20 percent black, and you were to define substantial reduction as a school which is substantially 80 to 20, you would have this school that is funded in that particular proportion. If the district itself is the reverse or, say, 75 percent black or, as in Claiborne, Ala., 80 percent black and 20 percent white, you would say the school and the classroom should be just exactly the reverse.

You might find that the very best thing that could be done in that school is to have a school and classroom which is 50 percent white and 50 percent black. In which case a district which just happens fortunately or luckily to fall into the 50–50 category under the Mondale bill would qualify, but the district which is 80 percent black or 80 percent white, I take it, would not.

In other words, that 80–20 percent district which we could agree that the children interacting with themselves on a 50–50 basis was educationally sound and made sense to us and to you would be denied that opportunity to be funded simply because the overall balance of that district happened to be askew.

Mr. FORD. Except the difference is that you keep describing this in the negative way of the administration legislation that talks about percentages of reduction and racial isolation which can only be measured with numbers.

The Mondale bill goes over on the other side and says we want you to set up a new educational mix that has substantial proportions of children from educationally advantaged background and substantial representation. In addition to that, the second thing you must do is have substantial representation in this mixture of both the majority and minority children in the community. It calls upon you to do two things.

Mr. POTTINGER. I was not addressing myself to the first point. With regard to the racial criterion, my point is simply this. If you are to define substantial as something akin to the racial composition of the entire district, you will be imparting into the process an almost fortuitous criterion; one which has no real bearing on the kind of interaction that a school district in the best of faith might attempt to achieve in a desegregated classroom.

That is the point, simply put. And again I have tried to demonstrate it by taking two radically different composed districts: one heavily black and one white.

Mr. FORD. But that is the beauty of using substantial, because what is substantial in Detroit might not be substantial in Mississippi, and that is the latitude involved.

Mr. POTTINGER. That is true, if you define "substantial" as you have. But what is "substantial" in Detroit and "substantial" in Mississippi also has no relationship to the educational values that you are trying to achieve in a desegregated school.

Mr. PUCINSKI. Mr. Mitchell testified yesterday that in dealing with these very sensitive areas he felt, and the department of NAACP, by a vote, adopted a policy that those decisions can better be made by the

Secretary in the Department of Education than through rigid legislation.

I think I am quoting Mr. Mitchell correctly.

Mr. **Ford**. Along that line, not to get into the numbers again on who found how many things wrong, there is agreement between GAO, and the civil rights groups that monitored the on-going programs that a lot of mistakes were made. And that there were some funds misused. And it would appear that some of those circumstances are such that you would have to recognize that it was a deliberate attempt to evade the real purpose of the legislation.

Recognizing that there is some element of this, some evidence of this, I am concerned that I see no difference in the language of the assurances or requirements for grants between the legislation now before the committee and the legislation that was before the committee before you had the opportunity to see how much ingenuity there is in various parts of the country to circumnavigate the legislation.

It suggests to me as a lawyer we have not done enough homework on analyzing these reports, if we have not learned anything from them that tells us how to tighten the legislation up to prevent it from happening. What it suggests is that operating as we were more or less in the dark, that somehow we luckily wrote the perfect set of protection. And I do know that our friends in the civil rights organization feel that some additional protections are going to be necessary.

I would hope that before we go much farther that you might have some suggestions about how much farther we might want to go in assuring that some of these things will not happen again. And I would hope you would address yourself particularly to the suggestion made here yesterday that the chairman enunciated, that these protections be in the form of conditions for the grant rather than simply assurances that flow with it. Let's make them conditions precendent instead of a contractual arrangement. Because we are dealing with people who cannot be expected to find the most liberal construction of their side of the contractual obligation. They are in a hostile communtiy with hostile forces against them.

They may be a school superintendent. I don't know how a school superintendent in Mississippi can ever do anything except interpret the law in the narrowest possible way when the Governor of that State announces publicily he would rather go to jail than enforce the Supreme Court order for desegregation.

How does a commissioner of education survive politically in that kind of atmosphere unless he can prove that he is holding as tight as he can to the minimum requirement of the law. That is the fellow I would like to protect by pushing him as far as we can possibly push him.

Mrs. **Green**. Mr. Chairman my question does not involve Mr. Ford's point at all, but it is based on another consideration.

I am persuaded that in spite of all of our programs that the quality of education is deteriorating, in our cities especially. I think surely—and I think a witness the other day said so—children in schools are not receiving education; they are learning to survive from one day to the next.

Here in Congress when the Army Corps of Engineers comes up to testify witnesses are asked "How much money could you wisely spend to accomplish this particular objective?" NIH witnesses are asked a similar question, "How much money could you wisely spend this year to accomplish the objective of Cancer Research, or whatever?"

We now have, as everyone knows, a surplus rather than a shortage of teachers. Accompanied by that we have a very high unemployment rate which includes lots of people who could be brought to in schools as paraprofessionals.

I might mention that in one other committee we are talking about an accerlerated public works program, which I heartily support.

Has any thought been given to an accelerated educational program considering the crisis that faces us, and has your office or has a task force really done a study of how much could be wisely used this year in our schools to accomplish the objectives which you have cited for this particular bill and for others?

I cannot repeat the words, but someone said that those who dream will never really stir the souls of men. When you prepared your budget for this and for other bills, what could you really wisely use, if we were going to make a dent and change the quality of education?

Commissioner Marland. It is a very challenging question, Mrs. Green, and one I must admit I devote a lot of time to thinking about in those moments when I am not otherwise engaged.

Nonetheless, the question that faces a Commissioner of Education at this time in history, if I can paraphrase your question is: What indeed would you do if you had the resources implicit in a large realignment of our national priorities?

I hope to have an answer for that question at least in some degree within the next 30 to 40 days. I am not postponing responding to your question other than to say that a responsible answer that I think will be very specifically compatible with the large questions you have raised will be available to you. I don't think it will be a large, widely circulated study, but it will be a study going out of my office that will say, "Given the opportunity to have a large realignment of public priorities, where could these moneys best be spent?"

As for the opportunity for the redeployment of people who are now out of work, people particularly, let us say, in the aerospace industry—bright, creative, trained people—we are now engaged through our Bureau of Educational Personnel Development in doing what you suggest—setting up a program that we hope will retrain such people quite briefly and quickly and qualify them for entry into other fields: including education, including the health sciences, including other social needs of our society.

We feel there is a task to be done here, and we are setting about it. As for the immediate, today, moving large sums of money into education, following the model, if you will, of title I, narrow in itself, now in its fifth or sixth year, I would have to say at this point, notwithstanding the very desperate fiscal condition of most of our cities, in terms of new ventures, new activities, changes, large changes in the system, we are not prepared to propose them at this time.

I would say that the mere keeping of the schools open so preoccupies us at this time that that in itself would demand any resources immediately available for any additions to educational finances.

Mrs. Green. Could I interrupt? You say in 30 or 40 days you would be able to come to the Congress with an answer. I understand the way the Bureau of the Budget operates, and I understand people within the administration. I am wondering if your answer won't have to be filtered through the Bureau of the Budget before you would present it to the Congress. Is there any group that would be able to come up here and give us their honest appraisal of what the needs would be without the Bureau of the Budget having previously censored it?

Mr. FORD. You are not suggesting that the President's Task Force on Education make its report public, are you?

Mrs. GREEN. I favor every bit of information being public. I think it is something that ought to be considered, it seems to me this is the question this committee ought to be looking at.

Commissioner MARLAND. You are asking a very profound question—one I hope to be able to answer, Mrs. Green.

Let me say I have no reason at this moment in my brief history here to believe that if the Commissioner of Education developed a study having to do with the abstract problems implicit in education in this land over the next 10 years that it could not be shared with anyone. And I would hope very much I would be able to share it with you personally. I think that obviously courtesy would dictate that it be shared also with other agencies of the administration at the same time.

Mr. PUCINSKI. Commissioner, you have been an excellent witness. I know you have a meeting with the President in another 30 minutes, so we are goint to try to get you out of here, particularly since I am hopeful you will be helpful in getting him to get behind the bill I put in here to give these 18,000 school districts some additional assistance. And I am hopeful we can find some solution to that problem.

Your testimony today before the committee, I think, has certainly given us a broader picture. I was impressed with the fact that you said this bill is one of the President's top priority bills. We will try to move as expeditiously as we can.

I do not believe any further hearings are necessary, because we made a pretty good record here. The committee indicated it may want to go to some of these communities and see how the bill is implemented.

One thing I think should be very clear, throughout the hearings yesterday and today we have talked about shortcomings in the $75 million, 55 of which has been spent in the last 6 months or so. But I think we ought not lose track of the fact that that money was spent under authorizations that were, even in my judgment, highly questionable.

I even challenged whether or not you could put together five authorizations like this and cook up a bill as you did, and the General Accounting Office gave me back a woeful paper I could not understand myself. But the fact of the matter is that whatever shortcomings occurred—and there were many, I think the task force did a constructive job in pointing a finger at some of them—that GAO has done a constructive job in pointing a finger on some of them. And you, yourself, on your own initiative have done a significant job. But it seems to me we now have before us the bills which, if enacted—or a combination of the two, or whatever way we go—to provide machinery that you did not have 6 months ago and do provide safeguards and criteria and standards and assurances that you did not have 6 months ago.

It seems to me that we ought to look at this legislation in that perspective.

Now, I do hope, Mr. Commissioner—because I know you are in a hurry—that we will be able to get from you either in the form of memorandum or discussions with the committee those areas that you think we can find agreement with the Senate bill, and then those areas that you feel strongly there is disagreement. Because it is entirely possible that on some issues at least we really are not very far apart, and it seems to me in this kind of negotiation within the two bodies we ought to first of all define the areas where there is no disagreement and put those aside. And then see what we can work in those areas where there is disagreement.

You make an excellent witness, and I hope we get a chance to have you before our committee many times. You and your associates are to be congratulated for the information you have brought us here today.

The committee will stand adjourned.

(Whereupon, at 12:35 p.m., the committee adjourned.)

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(The following material was submitted for the record:)

Congress of the United States,
House of Representatives,
*Washington, D.C., May 20, 1971.*

Hon. Roman C. Pucinski,
*Rayburn Office Building,*
*Washington, D.C.*

Dear Roman: This is to express my interest in the Emergency School Assistance bill which is currently before your Committee.

It is my understanding that hearings are now being held but that final action is being delayed until all the ideological differences can be accommodated. I would appreciate it if you could use your influence to get the other members of the Committee to reach some type of compromise on this in order to get the legislation off dead center. It is my hope that we will have an opportunity to vote on this legislation in the very near future.

Best personal regards.

Sincerely,

Mark Andrews,
*Congressman for North Dakota.*

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## Statement of Mrs. Helen P. Bain, President National Education Association

Mr. Chairman and members of the Subcommittee: I am Helen Bain, President of the National Education Association. On behalf of the 1.1 million members of the NEA, I wish to express my appreciation to the Subcommittee for the opportunity to present the Association's views on the legislation under consideration here today.

Attached for the record are those resolutions of the NEA which are particularly pertinent to the subject of quality integrated education for all children. Clearly, the NEA is committed to this concept, as it has been throughout the 114 years of the Association's existence.

We have reviewed the two major proposals before the Subcommittee, HR 2266, the Emergency School Assistance Aid Act of 1971, and HR 4847, the Quality Integrated Education Act. These bills both recognize that, because of circumstances beyond the control of the children and of the school districts, the needs of all children are not the same. The schools must be given assistance, financial and otherwise, to meet this challenge. We note that the President's budget provides for the funds authorized in both bills of $500 million for FY 1971 and $1 billion for FY 1972. Both bills provide for carry-over of unexpended funds into the succeeding year, an excellent provision which will do much to prevent waste of resources which could result if funds were to revert at the end of the fiscal year for which they are appropriated. Both bills provide that no state will receive less than $100,000.

The basic differences in the two bills are in the scope of services they are designed to provide. HR 2266 provides that 80% of the appropriated funds be dispersed to school districts on a formula basis, depending on the ratio of minority children in a state to all such children in the United States. HR 2266 provides for extension of services to children in nonpublic schools. The NEA opposes this provision in keeping with resolution C–20, Federal Support of Public Education. HR 2266 seems to be based on the premise that the federal funds are provided to applicant school districts as a catalyst, with the school district expected to reapportion its own funds to achieve desegregation throughout the school district.

The NEA cannot be satisfied with mere desegregation as a national goal. We are committed to achieving a racially integrated society. We are convinced that this must be the objective of legislation such as that under consideration by the Subcommittee. We believe that the legislation should clearly state that the goal is integration and that the word desegregation should not be used.

Although the NEA generally and traditionally resists federal control, we believe that, since the integration of schools is required by federal action, federal control is justified in legislation designed exclusively to achieve this federal objective. Experience since 1954 unfortunately indicates that without federal control, many schools in all parts of the country do not comply with the intent of the law. These recalcitrant school systems have had 17 years to adjust their boundaries, their curricula, and their staffing patterns to meet the mandates of the law. We believe the time has come for specific Congressional action to achieve integrated education.

We urge that the legislation provide that any recipient school district be required to commit itself diligently to pursue a program of providing every child an opportunity for quality integrated education. Unless such commitment is made the school district should not receive federal funds from any program presently established in the law or to be contemplated in the future. The school district's statement of commitment must be accompanied by a specific plan for integration of all schools under the district's control over a limited period of years.

We recognize that there are racially and ethnically isolated schools—such as those in Washington, D.C., and Rocky Boy, Montana, for example—where integration is impossible since the school population is almost exclusively composed of children of a minority race. We believe there should be provision for promising pilot projects in such racially isolated schools, with preference given to encouraging urban-suburban cooperation where possible. While integrated schools are the most desirable objective, realistically one must recognize situations such as cited above. Such schools need not be bad schools. They do need special assistance and special freedom to adjust their programs to meet their pupils' unique needs.

We believe that the legislation should contain a provision prohibiting funding of any district which has, since August 18, 1970 (the day the Emergency School Assistance funds became available last fall):

Aided private segregated schools;
Disproportionately demoted or dismissed minority group teachers;
Segregated children within classes; or
Limited participation in extra curricular activities or limited such activities in order to prevent minority group participation.

We believe that such a provision is justified and necessary, providing that the Commissioner of Education may waive the ineligibility when conditions warrant. We can conceive of a situation in which a school board proceeded with discriminatory practices last fall, while a new school board may be elected in the spring which does not share the old board's attitude. In such a situation a waiver procedure could be utilized. HR 4847 provides for such a procedure.

We note with approval that HR 4847 places the administration of the law with the U.S. Commissioner of Education. We believe this is proper. A major objective of the NEA is the establishment of a Cabinet level Department of Education. We believe that the Secretary of HEW, with the wide diversity of programs under his jurisdiction, cannot give proper attention to education. We have a long standing policy urging that all education functions of the federal government be under the U.S. Commissioner of Education. Since ⅓ of the American people are directly engaged in education, we believe this constituency deserves Cabinet level status for their concerns. We cannot support legislation which lessens the prestige of the Commissioner, since we are actively engaged in enhancing that prestige by elevating his office to Cabinet status.

While we have traditionally opposed substantial set-asides of appropriated funds for the Commissioner, we believe that this legislation, to be effective, should provide a 20% set-aside with specific designation of what the set-aside funds may be used for. This list should be limited to integrated children's television, production of textbooks and other instructional materials that are truly biracial and multiethnic, construction of educational parks, and urban-suburban cooperation in Standard Metropolitan Statistical Areas. The decision as to how many and which programs in these categories should be funded should be determined by the National Advisory Committee as provided for in HR 4847.

We also note that 3% of the funds authorized under HR 4847 are earmarked to reimburse attorney's fees and costs in successful lawsuits pertaining to this and other related acts such as Title VI of the Civil Rights Act, the 14th Amendment, and Title I of ESEA. This is a novel provision, and one we vigorously support. The fact remains that school districts and states use public funds to defend themselves from lawsuits stemming from their alleged discriminatory practices, while a potential plaintiff must raise his own funds for legal services, even though his action may result in achieving the federal objective of integration. This is patently unfair. HR 4847 would provide public money for the plaintiff, too. The provision that the payment of fees and costs is provided only for successful suits precludes vast numbers of frivolous actions.

We believe that 5% of the funds allocated to each state should pe set aside for funding private nonprofit groups for programs and projects to promote equality of educational opportunity through the participation of parents, students, and teachers in planning, implementation, improving communication, etc. It must be clearly understood that this is not a 5% set-aside for nonpublic schools, that rather it is designed to provide funds to groups—for example, a Parent Teachers Association or a local education association—to carry on a program of involvement in the integration process that will improve the attitudes and understanding of the people in the school community. If this is clearly stated and understood as the intent, we support this provision.

The provision earmarking 1% of the appropriation for evaluation appears in both bills. We believe that proper evaluation cannot be carried on unless there are advisory committees, composed mostly of parents, teachers, and students, at the local level, who not only advise on the development of programs but also measure and evaluate the effectiveness of the school operation. We believe such committees should be required by the law, and have similar composition to that of the National Advisory Committee provided for in HR 4847.

We insist that there be local committees composed of teachers, parents, and secondary school students, with at least half from the minority group concerned. These committees should, in cooperation with the school authorities, develop the school district plan and evaluate its achievements. The local committees should report regularly to the National Committee on progress achieved under the Act. No local plan should be funded from a state's allocation unless it carries the written approval of at least ⅔ of the local committee. Teachers serving on the local committee should be selected by the teachers' organization which represents the teachers, not appointed by the school administration.

We also believe that while district-wide integration cannot be achieved overnight, this must be the stated goal of the local authorities. We do not believe that the specific percentages of minority enrollment should be higher than 10%. We do believe that the Commissioner should be required to give preference in funding applications form a state's allocation to those school districts which meet the following criteria in the following order of preference:

(*a*) is an eligible district which maintains district-wide quality integrated schools. (A quality integrated school is defined as one which contains a substantial proportion of children from educationally advantaged backgrounds and is substantially representative of the minority and non minority of student body in the district as a whole, and is a stable school.)

(*b*) proceeded with integration without being required to do so by a court order.

(*c*) is seeking assistance to eliminate or substantially reduce minority-group isolated schools within the district.

(*d*) is seeking assistance to prevent minority-group isolation from occurring within the district

(*e*) is seeking assistance to enroll and educate in schools which are not minority-group isolated, children who would not otherwise be eligible for enrollment because of non-residence in the school district, where such enrollment would make a significant contribution toward reducing minority-group isolation in neighboring districts.

(*f*) are under federal or state court order.

(*g*) have been approved by HEW as adequate under Title VI of the Civil Rights Act of 1964.

Obviously, we do not believe that the legislative proposal before the Committee is an end in itself. It must be superseded by massive general federal aid to public education, including funds for construction, if its major thrust is to prevail. It is totally unrealistic to expect school districts, with their increasingly limited local and state resources, to redesign themselves to provide all of their pupils with the quality of education provided in the favored schools under this legislation. If real quality integrated education is to take place in the reasonable future, schools must be provided with extensive federal funds for school construction. Local property tax sources are not adequate to provide the needed new school sites, with the resulting abandonment of old facilities which are properly located.

We believe that the time is now to add a general provision to this legislation which provides for withholding of all federal funds from school districts which refuse to comply with the law of the land. Such provision would be most effective if applied to federal impact aid funds, vocational education, and ESEA. We are aware of the argument that such cutoff penalizes children, but we believe that no schooling for a few months is preferable to the kind of degrading and dehumanizing situation which many thousands of children suffer daily in segregated schools. The extension of the Voting Rights Act and the anticipated addition of 18-year-old voters to the electorate should lead to the election of responsible and truly representative school boards in presently recalcitrant communities. The Administration claims that desegregation has taken place in 90% of the school districts. If so, it is time that the hard core 10% be forced into compliance.

We appreciate the opportunity to share our views with the Subcommittee.

## Resolutions Adopted at San Francisco, 1970

### I. CONTINUING RESOLUTIONS

*C-1. Educational opportunity for all*

The National Education Association believes that education should be provided from early childhood through adulthood, be suited to the needs of the individual, be nonsegregated, be offered beyond the traditional school day and school year, be offered at public expense, and be required through the secondary school. The individual also must be free to choose, to supplement, or to substitute education in privately supported nonpublic schools. (69)*

*C-2. Public education*

The National Education Association believes that solutions to the problems facing public education must preserve and strengthen the priceless heritage of free public educational opportunities for every American.

Free public schools are the cornerstone of our social, economic, and political structure and are of utmost significance in development of our moral, ethical, spiritual, and cultural values. Consequently, the survival of democracy requires that every state maintain a system of free public education and safeguard the education of all.

The public school system is not expendable. Any movement that would diminish this vital asset will be opposed by the Association. (69)

*C-3. Schools in crisis*

The National Education Association believes that many schools are in crisis, evidenced by decay, neglect, and continuing deterioration. These schools must be provided with higher than average per pupil financial allocations to increase staff, buildings, and instructional material. Massive financial support is required to provide quality education. Organizational patterns must be developed which effectively involve parents, teachers, and students.

The Association urges its affiliates to initiate programs which strengthen and enhance the education provided by these schools. It believes its affiliates are uniquely able to design programs to inform and assist teachers in such schools. Continuous comminication and involvement with community groups are keys to the success of such programs.

The Association directs its officers and staff to design action programs and seek necessary legislation and financial support to improve schools in crisis. (69)

### C–4. Desegregation in the public schools

The National Education Association believes it is imperative that desegregation of the nation's schools be effected. Policies and guidelines for school desegregation in all parts of the nation must be strengthened and must comply with Brown *v.* Board of Education; Alexander *v.* Holmes County Board of Education, Mississippi; other judicial decisions; and with civil rights legislation.

The Association recognizes that acceptable desegregation plans will include a variety of devices such as geographic realignment, pairing of schools, grade pairing, and satellite schools. These arrangements may require that some students be bussed in order to implement desegregation plans which comply with established guidelines adhering to the letter and spirit of the law. The Association urges that all laws of this nation apply equally to all persons without regard to race or geographic location.

The Association will continue to oppose vigorously desegregation plans and practice that result in the systematic displacement or demotion of black principals and teachers. It urges federal agencies charged with approving and enforcing plans to do the same.

The Association believes that educators must have a voice in the decision-making process that involves transfer of educators to achieve racial balance. (69,70)

### C–12. Cultural diversity in instructional materials

The National Education Association believes that basic educational materials should portray our cultural diversity and the contributions of minority groups.

The Association recognizes that additional instructional materials chosen for classrooms and libraries may rightfully contain a number of biases to allow students to become familiar with the attitude and recommendations from various segments of the literary world. (69)

### C–20. Federal support of public education

The National Education Association seeks federal support of public education in line with the following principles:

a. That federal programs comply with current civil rights statutes and judicial decisions.

b. That there be substantial general federal support of the whole of public education.

c. That present federal programs of specific aids be continued, expanded, and improved by consolidation and simplification of administration, and monified so that all federal monies for elementary goods and services, either direct or indirect, shall be expended solely for the support of public schools. The federal government must be responsible for the added costs of educating youth whose presence in the local district is due to federally connected jobs or programs.

d. That further expansion of federal support to education be general in nature, and that these funds be allocated without federal control for expenditure and suballocation by state education agencies.

e. That the amount of aid be generally predictable for long-range planning and specifically predictable for year-to-year planning.

f. That legislation be consistent with the constitutional provision respecting an establishment of religion and with the tradition of separation of church and state, with no diversion of federal funds, goods, or services to nonpublic elementary and secondary schools.

g. That the legislation contain provision for judicial review as to its constitutionality.

h. That all federally supported educational programs, including those now assigned to other federal agencies (except those programs designed to train armed forces personnel), be administered by the U.S. Office of Education.

i. That where federal funds are presently provided to K–12 nonpublic schools, these funds be discontinued; however, until such funds are discontinued, these funds shall be controlled by public education agencies and be limited to tuition-free schools that meet all standards required of public schools. (This is not intended to apply to federal school lunch and milk programs.) (69, 70)

### C–25. United States Department of Education

The National Education Association urges the establishment of a cabinet-level U.S. Department of Education. (69)

### C–39. Civil Rights

The National Education Association believes in and is committed to achieving a racially integrated society and calls upon Americans to eliminate by statute and practice barriers of race, national origin, religion, sex, and economic status that prevent some citizens from exercising rights that are enjoyed by others, including liberties defined in common law, the Constitution, and statutes of the United States. All individuals must have access to public education, to the voting booth, and to other services that are provided at public expense that will make them effective citizens. All individuals must be trained and aided in developing strategies and expertise that will enable them to operate effectively in determining their future. (69, 70)

## II. CURRENT RESOLUTIONS

### *70–5. Evaluation of school programs*

The National Education Association believes the expertise of professional educators is essential when school programs are evaluated.

The Association recommends that local and state education agencies resist school evaluations by nonprofessional personnel, such as those being conducted under contract between the Department of Health, Education, and Welfare and private profit-making firms.

### *70–7. A nation under law*

The National Education Association believes that civil order and obedience to the law must be ensured in every community and school, without abridging human and civil rights. These rights must be protected by judicial procedures that ensure speedy and equal justice under law to all citizens with free legal counsel for the poor and destitute.

### *70–12. Student involvement*

The National Education Association believes that genuine student involvement requires responsible student action which is possible if students are guaranteed certain basic rights, among which are the following: the right to free inquiry and expression; the right to due process; the right to freedom of association; the right to freedom of peaceful assembly and petition; the right to participate in the governance of the school, college, and university; the right to freedom from discrimination; and the right to equal educationl opportunity.

### *70–26. Human relations in the school*

The National Education Association believes that improved human relations is essential to the school environment. To improve human relations in schools, the Association calls for:

a. School recruitment policies that will ensure culturally diverse staffs

b. The development of ways to improve police-community and student-police relations through the joint efforts of school, community, and law enforcement agencies

c. The reduction of the ratio of students to certificated staff to the level teachers determine, in each case, is essential to improved learning

d. Further research and development of ways to identify, change, and, if necessary, exclude prejudiced personnel who exhibit prejudiced behavior detrimental to the school environment

e. The training of police in behavioral sciences, sociology, and human relations to encourage an enlightened approach to law enforcement

f. An awareness of the continued neglect of Mexican-American citizens and youth. The Association shall assist its affiliates to provide programs relevant and helpful to alleviate this neglect in the public schools.

### *70–29. Education and national priorities*

The National Education Association believes there is a direct relationship between the quality of education which prevails and the quality of life in our society. Therefore, the Association calls for the President and the Congress to place education high in an immediate reordering of the nation's priorities.

### *70–31. Representation on boards of education*

The National Education Association encourages its affiliates to bring about changes in practice and in law to guarantee that elective or appointive boards of education be representative of and answerable to the community they serve.

### *70–35. Integration of school staff*

The National Education Association will assist its local affiliates to develop and negotiate programs for the desegregation of school staff. The Association urges state and federal agencies to provide the funds necessary to implement programs designed to achieve racial balance in the schools.

## ITEMS OF NEW BUSINESS ADOPTED

*Item No. 4*

The National Education Association insists that in school districts or states where the National Teacher Examination and other similar devices are used as a means for certification, evaluation, retention, salary, tenure, or ranking of educators, such practice should cease immediately.

In any case where a school district or a state refuses to terminate, following due notice, the use of the test, the Association shall take immediate steps to invoke sanctions and initiate procedures for censure and any other action deemed necessary. The National Education Association shall request the Educational Testing Service, Inc. of Princeton, New Jersey, to cooperate fully with the intent of this item of New Business. Educational Testing Service shall be advised that failure to cooperate may result in further action by the National Education Association.

The National Education Association calls upon all of its affiliate necessary action to ensure the full implementation of this item of New Business.

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## Statement of Hon. Dante B. Fascell, a Representative in Congress From the State of Florida

Mr. Chairman and Members of the Subcommittee: I appreciate having the opportunity to speak in support of the Emergency School Aid Act of 1971.

First, let me state that my primary concern in all instances is for quality education for all of our children. I sincerely believe that any additional money spent to aid the desegregation process must be spent with the purpose of improving the education of every pupil involved.

The genesis of the legislation which you are considering today was contained in several bills introduced in the last Congress for the relief of school districts operating under court or HEW orders for immediate desegregation. I am proud that one of those early proposals was my own.

The relief sought was not from the moral and legal obligation to comply with the law of the land, but rather relief from the excessive financial costs involved in the transition process.

At a time when school systems across our nation are caught in the financial squeeze of increased operating and construction costs, many are facing orders to implement desegregation plans immediately.

We now know there are added expenditures for special programs and personnel necessary in order to effect the elimination of dual systems with minimum disruption to the primary educational function of our schools.

As I stated in my remarks upon reintroducing this legislation in the House this year: "Desegregation does not take place in a vacuum. Like any social process, it is acted upon by human factors which complicate it, and therefore necessitate special attention."

Last year in the consideration of similar legislation, this distinguished subcommittee heard testimony from representatives of the Dade County School system—Dr. Leon Britton, Dr. Bert Kleiman, and Mr. Holmes Braddock. They outlined the Dade County experience in attempting to eliminate a dual school structure.

In that testimony the gentlemen from Dade County called attention to the five major areas where added costs are encountered in the desegregation process: 1) immediate and intensive staff inservice programs in intercultural relations 2) additional administrative and special teaching personnel 3) additional transportation requirements (excluding bussing to achieve a racial balance) 4) additional security services and 5) provisions for equal educational opoprtunity for pupils who have been affected by past discrimination.

The provisions of the bill before this subcommittee meet those needs. Funds appropriated under the act would be authorized for remedial programs, additional professional staff, comprehensive guidance and counseling, and repair and remodeling of existing facilities. In addition funds would be used to promote innovative interracial programs and the development of new instructional techniques.

I believe the bill as it has been redrafted for this session of Congress is even stronger than the legislation which passed the House late in the last session. For example, the arbitrary requirement of a court or HEW order since 1968 for eligibility for funds has been eliminated.

Mr. Chairman, the Congress has a responsibility commensurate with our history of commitment to quality public education—an impressive history which includes the impacted area aid program and the landmark Elementary and Secondary Education Act—to provide this much needed relief.

I want to emphasize that the primary purpose of this legislation is to assure quality education for all of our children. I hope the gentlemen will report the measure favorably.

BERKELEY UNIFIED SCHOOL DISTRICT,
*Berkeley, Calif., June 17, 1971.*

Hon. ROMAN PUCINSKI,
*Chairman, Subcommittee on Education,*
*House of Representatives, Washington, D.C.*

MY DEAR MR. PUCINSKI: I am very concerned that the new Emergency School Aid and Quality Integrated Education legislation takes into account the needs of various school districts at various stages in the desegregation-integration process.

School districts which have been totally desegregated two or more years have different needs at this time than do systems initiating their programs unless these districts are able to compress their progress into a shorter length of time.

One of our main needs at this time to assure the success of our integration is to provide funds to have a full-time person at each school to direct a human relations team of staff members, parents, and students to deal with the problems of human relations and to help teachers to develop the skills needed to achieve a high quality/equality education.

Districts such as ours have all gone through training which has helped the staffs and community to be aware of various needs of children in the desegregated classes. However, now we need to train a core of people to recognize problems, plan strategies, collect data, and attack problems which will bring us closer to the integrated ideal and hence to a beautiful nation if we have enough models to inspire other districts.

In other words, we now need to train enough people more intensely to use the broad information they have received in various inservice courses to give the classroom teacher direct help and to be on the site at all times to help.

In addition, I feel that all school districts need a training center, operating full time to place staff members and parents in an atmosphere which is conducive to learning. In-service training should go on all day long in a school district. This training center should be fully staffed with a team of resource people from various fields who can help staff members see and resolve problems in a comprehensive manner.

From what I have heard, you are a great person and really want some input from districts about what their needs are in this area. With that information, I decided to forward this letter directly to you.

May I hear from you if your busy schedule permits it. If you are ever in Berkeley, do come by to visit our school district.

Sincerely,

KATHRYNE FAVORS, Ed.D.,
*Director, Office of Human Relations.*

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COUNCIL OF CHIEF STATE SCHOOL OFFICERS,
*Washington, D.C., March 25, 1971.*

Hon. ROMAN PUCINSKI,
*Chairman, Subcommittee on General Education, Committee on Education and Labor, U.S. House of Representatives, Washington, D.C.*

DEAR CONGRESSMAN PUCINSKI: Enclosed is a statement from the Council of Chief State School Officers on the Emergency School Aid proposals now under consideration by the Subcommittee which you chair.

The two principal points and several minor points are emphasized in the testimony. One major point is the urgent need to more directly involve the state educational agencies in the operation of this proposed program. We feel that this can best be done by making the state educational agencies directly responsible for operation of the programs as is the case for most other federal programs for elementary and secondary education. Most of the bills before your Subcommittee would largely by-pass the state educational agency.

The second major point is the timing of the appropriation. School districts need to know well before schools close this spring what funds are available in order to use the summer months for staff training and other development work to produce effective approaches to school desegregation programs.

The Council appreciates the opportunity to present its views to the Subcommittee. A copy of this statement is being mailed to each member of the Subcommittee.

Sincerely yours,

B. ALDEN LILLYWHITE,
*Federal Liaison Assistant.*

## Comments on Emergency School Assistance Legislation [1]

Mr. Chairman and Members of the Subcommittee: The Council of Chief State School Officers appreciates the opportunity to submit testimony in support of the type of federal assistance envisioned in the Emergency School Aid Act. The federal funds provided by the Emergency School Assistance Program during the current school year for increased personnel and for new types of community activities and school programs to meet the difficult problems inherent in achieving school desegregation have proved of immense value in assisting school systems implement court ordered and voluntary desegregation plans. In the face of severe tension and near-crisis situations, this federal assistance helped bring a degree of stability to these school districts where fundamental changes in school attendance patterns and in community attitudes were necessary.

The Emergency School Assistance Program now in effect is the first step of the Emergency School Aid Act (ESAA). The need for federal assistance for the purpose specified in ESAA is clearly evident. The great educational challenge in the immediate future for many school districts is providing quality education for all children as the desegregation process continues. Early enactment of authorizing legislation and appropriations to implement the authorization is essential if school districts across the nation are to make the most effective use of the assistance program during the 1971–72 academic school year. Thus, the Council of Chief State School Officers urges early action on this authorizing legislation. Our comments on the provisions which we feel would be most helpful are described briefly below.

The Council does not specifically support one bill as opposed to other bills under consideration by the Subcommittee. We note that H.R. 2266 has the same basic objectives as H.R. 4847, although many of the provisions are different It is the opinion of those of our membership most intimately acquainted with school desegregation problems that the approach taken in H.R. 2266 and most of its provisions are preferable to the major provisions in H.R. 4847. This is consistent with the position taken by this Council in the last session of the 91st Congress when we supported the House passed bill as opposed to the proposal under consideration by the Senate. Comments in support of this position are developed later on in the testimony.

A major deficiency in most, if not all of the bills, is that they give state departments of education very little authority or control in administration of this assistance program. Applications from local school districts for all but 20% of the funds are to be submitted through state educational agencies for review and comment and the Secretary is required to consider those comments in his action on the applications. From that point on, the state agencies have little, if anything, to do with program operations. They have no veto, disapproval, or approval authority over local applications and very little, if anything, to do with actual operation.

This seems to the Council to be an unusual procedure, to say the least, when the same local school districts which receives the federal funds for Emergency School Assistance are subject to the state laws, rules, and regulations of the state educational agencies governing most all other education activities which they conduct including the administration of most federal funds for other educational programs as well as state and local funds. More important, however, states have the responsibility of providing leadership, and giving advise and technical assistance to local districts in complying with Title IV of the Civil Rights Act and the state agencies are called on to make many determinations regarding segregation-desegregation practices that vitally affect local school districts. In some state courts desegregation suits have been brought against the state educational agencies.

More astonishing than these aspects, however, is the fact that the Administration is now proposing to give the states in its emerging Special Revenue Sharing Act approximately $3.1 billion of federal funds for education, with virtually no strings attached except that specified sums must be used in each of five broad national priority areas. States are to have authority even to set the formula for distribution of most of these funds to local districts within the states. One of the arguments given for the special revenue sharing proposals is that the state and local educational agencies know better than the Federal Government what the local problems are and how to solve them. Thus, it seems to the Council to be completely inconsistent to give the states such complete authority over the major block of federal education funds on the one hand and, on the other, to almost completely bypass the same agencies in this program that deals with perhaps the most difficult problem presently faced by educational agencies.

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[1] By B. Alden Lillywhite, Federal Liaison Assistant, Council of Chief State School Officers, March 25, 1971.

The Council believes that this Emergency School Aid Act should be a state administered program under a state plan or similar arrangement. This will make possible the necessary coordination with other closely related or supplementary federal programs which are included under the state administered special revenue sharing proposals and will enable the states to coordinate all local desegregation efforts and to play an integral part in the administration of this program.

It is noted that H.R. 2266 reserves 20% of the appropriation to the Secretary to fund potential models and other types of activities found useful in the various aspects of decentralization. H.R. 4847 authorizes such activities without regard to the limitations of state distribution formulas. It would seem likely that a compromise between the two bills could be reached on this point without limiting the funds available for allotment among the various states. This "risk capital" invested in demonstration desegregation activities if properly managed could produce a significant impact on desegregation activities and on the entire educational system as well.

We do not oppose the reservation of this 20% for use by the Secretary for special purpose projects, but we feel that it also could be administered by the states with a greater degree of effectiveness than when it is administered by an agency not responsible for the 80%. In the event that the 20% is reserved for administration by the Secretary, projects approved under it should first be submitted through the state educational agency and their operation should be executed in close cooperation with the state or other administration of the 80%. If this cooperation and close working relationship is not achieved between the two parts, the advantages of the "risk capital" or "seed money" for demonstration projects may be largely nullified because these projects would in effect be run in relative isolation from the other program.

Equally important to arrangements for administering this assistance program is the time of year the funds become available for use by locel districts. Principle uses to be made of the funds is summer workshops or training sessions of school personnel, developing materials or procedures for new programs and activities, minor renovations of buildings and planning for installing new and different activities when school opens in the fall. Unless the local school superintendents know in advance of the closing of school in the spring that funds will be available shortly after spring closing, they cannot make commitments to school personnel for their employment during the summer in these essential planning, training, developmental and rehabilitative activities. Moreover, if the commitment is made but funds are not available such employment of staff will be lost and the districts will face opening of school in the fall without the necessary preparation for most effective operation. A number of school superintendents have told us that they could make much more efficient use of the funds with this lead-time available for planning and other preparation. The $75.0 million for Fiscal Year 1971 was not available to school districts until August 26 and many of them began project activities withoot the necessary lead-time for planning activities. We would strongly urge, therefore, that action on the authorizing legislation be completed and the necessary appropriation made as rapidly as possible. If possible, the amount of funds that are to be available should be known by the states and local educational agencies by May 1.

Some comments on the provisions of H.R. 2266 and H.R. 4847 seem appropriate. H.R. 2266 authorizes the appropriation of a total of $1.5 billion over a two-year period. Funds appropriated for one fiscal year remain available for obligation during the subsequent fiscal year. Eighty percent of the funds are allotted among the states for the following three categories of eligibility:

Districts implementing a court ordered or Title VI desegregation plan;

Districts voluntarily seeking to desegregate an entire school system; and

Districts seeking to eliminate or reduce racial isolation in one or more schools or to prevent such isolation from occurring.

The requirements are uniform and would permit any school district seeking to integrate its schools or to prevent segregation could qualify under one or more categories.

Financial assistance would be available under both proposals for a wide variety of activities related to the desegregation process. H.R. 2266 gives local educational officials the widest possible latitude in devising programs designed to meet the special needs of the children of their particular school district. The only limitations on supportable programs are that they require additional funds, over and above the normal expenditures of the school district, and that they be directly related to desegregation or the elimination, reduction, or prevention of racial isolation.

H.R. 4847 earmarks a large percentage of funds for special purposes and does not provide for the flexibility required to cope with the various problems of individual school districts. Projects operating under required legislative earmarks are likely to become stereo-typed and will neither allow for nor produce the innovative approaches so necessary to reduce polarization and provide effective working relationships for maintaining and improving the quality of education.

Considering the amount of funds contemplated relative to the overall need, the earmarks for attorney fees and education parks seem to us to be undesirable. While these activities may be noteworthy under different circumstances, they seem to be of low priority relative to activities more nearly designed to meet individual district needs.

H.R. 4847 could possibly encourage remedial action only in those schools where racial balancing is easiest, leaving high minority concentrations without assistance which would tend to perpetuate segregation in many individual schools. This is an additional reason we would favor a bill more nearly like H.R. 2266 than H.R. 4847, although it would seem that the best features of both might be combined.

H.R. 4847 limits its assistance to approximately 1,000 districts out of about 22,000 districts, and requires specific expenditures for a more limited number of children than H.R. 2266. It would eliminate complete states from eligibility because there would be no district within certain states which could meet the eligibility requirements. It is difficult to justify eliminating 1.6 million minority group children from being eligible for desegregation assistance.

We believe that the flexibility of H.R. 2266 modified by state agency administration will produce more actual desegregation by focusing on specific problems of large numbers of children.

The wide latitude given districts in the purposes for which these funds can be used has been noted and we feel this is desirable. At the same time, this discretionary authority carries with it an obligation that projects be developed with extreme care and that there be a searching review of every project by the approving agency to assure that the project activities are appropriate to the problems to be dealt with and that there is some reasonable assurance that the project plans are adequate for successful operation. Thus, technical assistance from the states, the central office, or from private firms in developing project structure and methods of operation would seem to be highly desirable. In this connection, it would seem appropriate that efforts not be made to allot the proposed $1.0 billion for 1972 during the 1972 Fiscal Year. It may be more prudent to limit the amount of funds to be expended during 1972 to $500 million and the same amount in 1973 rather than trying to allot the full $1.0 billion in one year. Under this procedure, the funds should be available for expenditure through Fiscal Year 1974 or 1975. A little more time and care in planning and initiating project operations would likely make for more effective results in the long run.

We note with some concern that no funds are requested for Fiscal Year 1972 budget for the operation of Title IV of the Civil Rights Act of 1964. While funding of Title IV may be considered unnecessary during the period ESAA is in full effect, we feel that it should not be repealed. It provides resources not available under the proposed legislation by supporting technical assistance units in state departments of education, colleges, and universities, and through numerous institute programs. In addition, Title IV staffs provide a reservoir of school administrators experienced in the desegregation process for assisting other districts. This authorization should continue to be available for assistance during the long pull after funds appropriated under the ESAA have been expanded.

In conclusion, we urge the Subcommittee to take prompt action on this legislation to assure that funds will be made available as quickly as possible for more effective planning, that the funds be channeled through state educational agencies, and that support for Title IV be continued to provide needed technical assistance.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
*Washington, D.C., April 19, 1971.*

Hon. ROMAN C. PUCINSKI,
*Subcommittee Chairman on General Education, House Education and Labor Committee, Washington, D.C.*

DEAR CONGRESSMAN PUCINSKI: As you know the Senate is currently considering two school desegregation bills: S. 195, the Administration bill, and S. 683 which was introduced by Senators Mondale, Brooke, Case and others. As similar Legislation is before the General Subcommittee on Education, I wish to convey to you my support of H.R. 4847, the companion bill to S. 195, which was introduced by our distinguished colleagues, Congressman Hawkins and Reid.

The dissimilarities between the administration school desegregation bill and H.R. 4847 are quite extensive. The bills would have very different and far reaching effects on the quality of education throughout this Country. I believe it is clear that the Hawkins-Reid bill would most effectively provide the means for true school desegregation.

A few major deficiencies of the administration bill are:

(1) The failure to establish a meaningful integration standard defining requirements for funding.

(2) The lack of provision for parents and teachers to participate in the development and implementation of projects funded under the act.

(3) The failure of the bill to limit activities for which funds may be received opens up the possibility of more abuses by local governments by authorizing unlimited expenditures for renovations, equipment, etc.

(4) The bill relies entirely upon federal officials to assure compliance with its requirements and related legislation.

By contrast, the Hawkins-Reid bill is more selective in allocating funds for desegregating school districts. Under this bill, school integration standards are more meaningful and clearly defined. In addition, the bill assures the participation of the entire community in the development of school integration projects. I am convinced, as I am sure you will be, that this legislation is far superior. Therefore, I respectively urge you and your committee to give this bill your fullest attention and favorable consideration.

Sincerely,

PARREN J. MITCHELL,
*Member of Congress.*

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### STATEMENT OF HON. JOHN S. MONAGAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CONNECTICUT

Mr. Chairman and distinguished Members of the Subcommittee: I should first like to thank you for providing me with this opportunity to appear before the Subcommittee to express my support for the Emergency School Aid Act of 1971. I was a co-sponsor of the Emergency School Aid Act in the 91st Congress, and in this Congress I have introduced H.R. 6047 which is similar legislation.

I testified in support of this legislation in the 91st Congress, and I continue to believe that the programs authorized by this bill to assist school districts to meet the special problems incident to desegregation and the elimination, reduction and prevention of racial isolation present workable methods to facilitate the actual achievement of those objectives.

I have particular interest in this legislation because the City of Waterbury, Connecticut, the largest urban area in the Fifth Congressional District which I represent, was the target of the first Federal desegregation suit in the entire Northeast. Without going into the merits of the Justice Department's suit against Waterbury, the allegation of de jure segregation put a great pressure on the City of Waterbury to take immediate action greatly to increase minority enrollment in its schools. A great deal of money will be required to meet this objective, but Waterbury, like every other major metropolitan area in the United States, is already hard pressed to find new sources of income for current expenditures. I am hopeful that funds authorized by this bill when appropriated would help Waterbury to meet the extraordinary expenditures which have become necessary as a result of the Federal desegregation suit.

In my testimony before this Committee last year I noted several shortcomings with the bills then being considered, and I am pleased that most of these recommendations have been incorporated in the current proposals for emergency school aid. Thus, in the bill now being considered, the double-counting eligibility criteria will apply to areas which are the objects of either State or Federal court orders, unlike last year's criteria that were limited to Federal court orders. Also, in the current legislation there are adequate assurances that no funds provided under the bill will be used to subsidize private, segregated schools or to supplant local or State funds that otherwise would be committed to desegregation efforts. In addition, the discretionary authority of the Secretary of Health, Education, and Welfare over funding has been replaced in large part by a tightened legislative formula for mandatory funding of school districts filing acceptable desegregation plans.

Whether attempting to solve the problems of de jure or de facto segregation, there will always be an urgent need for new school construction funds. I know that is the case in the City of Waterbury, and I am certain that it is the case in other cities which are the objects of desegregation suits. In H.R. 6047, I have made provisions for allowing funds to be used for new school construction when the construction is part of an acceptable school desegregation plan. I firmly believe that the inclusion of school construction funds, with proper legislative guidelines, will do more to accomplish desegregation than any other single provision in the legislation under consideration, and I urge the Committee to adopt my proposal.

This legislation will do much to broaden the educational opportunities for all children, especially those in underprivileged areas, and ultimately it will raise the quality of education nationwide. I urge this Committee to take quick and favorable action to provide the funds necessary for school districts to carry out desegregation plans at the earliest practicable date.

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AMERICAN CIVIL LIBERTIES UNION,
*Washington, D.C. April 15, 1971.*

Hon. ROMAN C. PUCINSKI,
*Chairman, Subcommittee on General Education, Committee on Education and Labor,*
*Washington, D.C.*

DEAR MR. CHAIRMAN: The American Civil Liberties Union, through its southern affiliates and the Lawyers Constitutional Defense Committee, for many years has represented black children, their parents, and their teachers in school desegregation litigation and has sought to eliminate racial discrimination in the educational system.

Although the job of physically desegregating school *systems* in the South is close to completion, our effort to achieve meaningful equality of educational opportunity within the integrated systems and to remedy the effects of past discrimination has just begun. We therefore have a great interest in two bills now before you, H.R. 2266 and H.R. 4847, both of which provide for the disbursement of federal funds to local school districts to assist in the maintenance of integrated education and to eliminate the educational effects of racial and economic segregation. We strongly support the passage of H.R. 4847, as it contains provisions more likely to assure that both local educational agencies and the federal agency responsible for allocation under the Act will perform in a manner consistent with the purposes of the legislation.

In particular, we would like to call to your attention five critical differences in the proposed bills.

*First,* H.R. 4847 conditions funding to local educational agencies on the existence of integrated schools or of a plan to achieve such integration. Although provision is made for the funding of pilot projects in "racially isolated schools" to alleviate the effect of such isolation, the bill prohibits such funding if the racial isolation is the result of discriminatory policies. H.R. 2266 on the other hand would allow funding of districts operating under court desegregation orders or under a plan approved by HEW under Title VI of the Civil Rights Act of 1964, regardless of whether integration is actually taking place or, for that matter, whether the orders are being complied with. H.R. 2266 would also permit funding for districts which have adopted plans to reduce the number of students in "racially isolated schools," without defining what "reduction" means and without in any way specifying by what standards the allocating agency is to determine whether "racially isolated schools" are in fact "racially segregated schools." H.R. 2266, for instance, would allow funding of a district operating under a freedom-of-choice plan where some black students were enrolled in white schools, but where black schools remained all-black. Such plans have, of course, been consistently rejected by the courts, see *Green* v. *Board of Education of New Kent County*, ——— U.S. ——— (1968); *Carter, et al.* v. *West Feliciana Parish School Board*, ——— U.S. ——— (1970).

*Second,* H.R. 4847 carefully defines and limits the type of programs which may be funded. It provides that no more than ten percent of any grant may be used for remodeling or alteration of existing facilities, and only where necessary to facilitate one of the approved educational programs. H.R. 2263, by contrast, allows funding of projects "which would not otherwise be funded and which involve activities designed to carry out the purposes of this act." The act furnishes examples of the kind of program which could be funded including: (1) the alteration of existing school facilities and/or the lease of mobile classrooms, without limitation as to expenditures and with no requirement that the expenditure be necessary to an educational program under the act; and (2) "other specially designed programs or projects which meet the purpose of this act." Although experience under Title I of the Elementary and Secondary Education Act of 1965 shows that explicit statutory standards for qualifying projects do not guarantee compliance, the vague and open-ended standards in H.R. 2266 invite and indeed may well encourage loose regulations and vague project applications from local educational agencies.

*Third,* H.R. 4847 requires participation of parents of minority group children and minority teachers in the development and implementation of projects under the Act. H.R. 2266 contains no such requirement. The unfortunate reality throughout the South is that black people are inadequately represented on school boards. Countless numbers of white-dominated boards have actively discriminated against black students and teachers even after full integration of the systems. Although minority group participation as required in H.R. 4847 does not insure that only meaningful projects will be proposed or that there will be non-discriminatory implementation of funded projects, it does make wholesale flagrant abuses, such as occurred in the expenditure of Title I funds, less likely.

*Fourth,* H.R. 4847 provides funds for reimbursement of attorneys fees in successful lawsuits under H.R. 4847 itself, Title I of the Elementary and Secondary Education Act, and Title VI of the Civil Rights Act of 1964. No such provision is contained in H.R. 2266. Experience under the public accommodation and employment discrimination sections of the Civil Rights Act of 1964 (Title II and VII), which contain similar reimbursement provisions, indicate that the policies of those acts have been significantly furthered by providing private attorneys willing to litigate to enforce the acts on behalf of poor people the economic basis for doing so.

Moreover, the Justice Department is not able to police every school district in the South. The history of school desegregation litigation is, for the most part, one of parallel efforts of government and private lawyers. Unquestionably, were the government alone carrying the burden of school desegregation litigation, far less progress would have been made in this area. In order to insure the maximum effective enforcement of the Act, and the continued involvement of private attorneys in this area, they must be provided the wherewithal to litigate on behalf of persons unable to hire attorneys to enforce their public rights.

*Fifth,* H.R. 2266 provides that financial assistance under the act may be used to provide transportation services for students, *but* "shall not be used to establish or maintain the transportation of students to achieve racial balance, unless funds are voluntarily requested for that purpose by the local educational agency." In other words, although being under a court-ordered desegregation plan is one of the criteria for receipt of funds under the act, this language leaves room for critics of integration to argue that even some court-ordered bussing which they view as designed "to achieve racial balance," may not be financed by federal funds. Such a result makes no sense. In other contexts, these prohibitions have caused confusion and contributed to delay in achieving desegregation. Many, including the Administration, have opposed their adoption. Such opposition is similarly appropriate here. We therefore urge you to delete this provision from whatever bill is adopted by your Subcommittee.

For the above stated reasons, we urge the adoption of H.R. 4847. We ask that this letter be made a part of the record of the hearings recently concluded on these bills.

Sincerely yours,

ARYEH NEIER,
*Executive Director, American Civil Liberties Union.*
HOPE EASTMAN,
*Acting Director, Washington Office.*

North Carolina Central University,
*Durham, N.C., April 14, 1971.*

Hon. Nick Galifianakis,
*House Office Building,*
*Washington, D.C.*

Dear Mr. Galifianakis: I am enclosing a copy of a letter and other materials I recently sent to Senator Walter Mondale, concerning the school desegregation aid bill, federal support for educational parks, and other educational programs for dealing with the complex problems related to school desegregation. I developed these materials out of my interest and involvement in the Durham City and County school desegregation, merger, and bond issues. However, I feel the proposals may be relevant to other cities in the South and, perhaps, in other regions of the country, as well. I hope you will consider the proposals in this light, and if you feel they are of merit, that you will actively support the development of educational parks and other programs for reorganizing education to prepare children for the complex world of tomorrow.

If you know of any way I can be of assistance in my capacity as an educator, researcher, or citizen, please feel free to call upon me.

Respectfully yours,

Edward A. Nelsen (Ph. D.),
*Director.*

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North Carolina Central University,
*Durham, N.C., April 14, 1971.*

Hon. Walter Mondale,
*Senate Office Building, Washington, D.C.*

Dear Senator Mondale: I was deeply impressed and moved by the speech you presented to members of the Society for Research and Child Development last week in Minneapolis, and I was especially pleased that I had an opportunity to meet you and talk with you briefly after the meeting. I would very much appreciate a copy of the speech you presented at SRCD, a copy of the speech (referred to by Dr. Zigler concerning the needs of children) that you presented on the Senate floor, and a copy of the school desegregation aid bill you introduced to the Senate.

I have been concerned with educational problems in Durham, North Carolina for several years now, and have developed some understanding of many of the community's problems and educational needs. I have come to feel the educational park concept holds great potential for restructuring educational programs in a manner which may resolve some of the problems, and furthermore, improve educational opportunities for all children. I am enclosing several statements I have prepared which describe my role, the complex problems of our community, the general rationale for educational parks, and some of the potential advantages of such facilities for a city such as ours. I ask you to consider these materials with regard to the potential the educational park concept offers, not just for large urban areas, but for communities of all types, especially Southern communities in which segregation has had such indelible effects upon existing educational institutions.

Any information, assistance, or advice you could offer would be sincerely appreciated. I would be especially interested in knowing any sources of information, literature, etc. which you found to be helpful in developing your views relating to educational parks and other promising innovations.

I also wish to offer my services as a child development specialist, an educator, and a concerned citizen. If there is any way I can contribute to the efforts toward restructuring governmental and educational programs with the needs of all children foremost in mind, I will do what I can. I might point out that I am presently participating with an interdisciplinary, interinstitutional, and interracial team of researchers which is studying the social impact and problems of school desegregation in North Carolina.

In conclusion, I wish to express my appreciation to you for the strong, nonpartisan, and constructive leadership role you have taken with regard to the educational, social, and other basic needs of children.

Sincerely yours,

Edward A. Nelsen (Ph. D.),
*Director.*

## THE EDUCATIONAL PARK

Rationale: The educational park, or the concept of centralized educational programs and facilities, is the logical extention of a historical trend away from small, dispersed, fragmented facilities and programs (the one room school house) which served children of different ages, abilities, and interests. America found it necessary to give up the one room school house, in spite of the positive regard of the people and in spite of certain real advantages to such facilities, in favor of graded schools and more complexly organized high schools. In part because of desegregation, but more basically, because the self-contained classroom is not structured to allow for the diverse educational needs for a rapidly changing, complex society, it may be necessary to give up the self-contained classroom, again, in spite of the positive regard of the people and in spite of certain real advantages to such facilities. To meet the needs of children who are growing up in the present society and who will live in a future society which is so complex that we can't presently comprehend it, we need a new kind of basic educational organization or structure. Such an organization could be achieved within the educational park concept. Such a concept allows for specialized facilities and programs to meet diverse needs and interests. Such a concept allows for instructional options which may be offered to pupils and parents, e.g. as to the type of instruction, the curriculum, and the use of special facilities. Such a concept allows for integration of programs for the entire school system into an organized totality rather than fragmented, loosely related, dysfunctional parts. Such a concept maintains the basic integrity of the human group, wherein one or two or three teachers are basically responsible for a given group of children. Such a concept also allows for facilities and programs in which children can be gradually and meaningfully exposed to persons outside of their primary classgroup, so they can learn to cope with a larger social world.

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## IS AN EDUCATIONAL PARK POSSIBLE FOR DURHAM?

To illustrate one type of educational plan which could be considered by the Durham Community, President Whiting and several faculty members at NCCU have outlined the following suggestions: It is suggested that the design and implementation of an educational program, including the construction of new facilities, and the use of all present facilities, be organized around one or two central campuses or "*educational* parks," in which innovative instructional programs could be developed around the concepts of *flexible scheduling, individualized instruction, ungraded classes, team teaching,* and/or *education for all members of the community.* The proposed school system could be structured around one or two campuses, located as near as possible to downtown Durham. If there were two campuses, for example, one could serve primary age children, the other secondary age children.

It is proposed that the reorganization be planned and implemented in two phases. The first phase would be concerend with meeting the present educational needs and opportunities of Durham City and Durham County. The second phase would be concerned with the long range needs and growth opportunities for Durham County.

Instead of scattering small facilities throughout the county, science facilities and programs, vocational training facilities and programs, gymnasiums could likewise be provided centrally for all students and citizens, as funds permitted. It is possible that the initial phase could include not only classrooms, but also a new community library which could serve not only children in all schools in Durham City and Durham County, but also citizens of all ages throughout the community. Indeed, there is great potential that this type of plan could attract funds from the federal government, private foundations, and other sources so as to supplement the local funds that are available.

This proposal is but one of several types of plans which could improve education in Durham, and many alternatives must be considered in developing any plan. It is therefore recommended that a planning committee be established for the purpose of developing a comprehensive, long range plan for education in Durham City and Durham County.

Educational planners should be consulted. Moreover, the views of all citizens of Durham City and Durham County should be actively sought as a plan is being developed. To initiate and facilitate development of a plan, a number of NCCU faculty members wish to offer their services along with other interested citizens and educators, to the Durham City and Durham County School Boards.

*Potential advantages*

1. There is great potential for attracting substantial funds from the federal government, private foundations, and other sources.

2. Special Educational programs in centralized facilities could be available to all children thereby *structuring* the total system to provide, (a) *excellent and equal* educational opportunities for all, (b) specialization of program development and teaching personnel so as to provide the best possible programs, and (c) concentration of funds into development of such programs and facilities rather than fragmentation and dilution into many small facilities and limited programs in each school.

3. A centralized facility could reduce or eliminate competition between individual schools and areas in the county for funds, facilities and special programs.

4. Centralized facilities and program could attract and facilitate involvement of the excellent colleges and universities in the Triangle Area for program development, research on instruction, teacher training, and other types of cooperative and mutually beneficial endeavors.

5. *Such a program could unite Durham citizens in support of education.* Centralized facilities and programs could focus attention, energy, and educational development on an "inward" center rather fragmenting energy in many "outward" directions. It could prevent ghettoization of Durham. Citizens from throughout the area could work together in support of education. Durham, which calls itself the "City of Education and Industry" could become the educational pace setter and showplace of the South. But more important, Durham could resolve its present educational crisis—not on the basis of compromise—but on the basis of an educational plan and program in which all citizens could share pride.

### QUESTIONS TO BE ANSWERED AND ISSUES TO BE RESOLVED

1. Site location. Can large centrally located sites be obtained?

2. How many central units are desirable? One K–12 facility? A primary facility and a secondary facility? Three facilities, e.g. primary intermediate, and secondary?

3. Public education and acceptance. Can all citizens of Durham City and County be educated, i.e. given correct and understandable information, such that they can intelligently decide whether or not they want such an educational re-organization?

4. Citizen input. Can the wished and desires of all citizens, including parents teachers, and students, be actively sought and considered so they can be included, in a plan, whether the plan is based upon the educational park concept or some other concept?

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MARCH 25, 1971.

## AN OPEN LETTER TO MEMBERS OF THE DURHAM CITY AND COUNTY BOARDS OF EDUCATION

As an individual citizen and concerned parent, I have been following the developments relating to the school merger question now for nearly three years. I live in the area served by the County School System, where my children attend school. Several years ago, I was a member of one of the Consolidation Study Group Subcommittees. More recently I have been meeting with the group known as Durham Citizens for Quality Education, although I do not share all of their views. I am employed at North Carolina Central University, and I have also been in continuing communication with many members of the black community in Durham, including a number of respected leaders who are not identified with North Carolina Central University. Moreover, I have had extensive discussions with several long-standing citizens in the white community in Durham. I have also discussed the issues with several members of both boards. I have been exposed to many different viewpoints concerning the merger question.

The prepared statement I read at the public hearing Monday night represented a summary of the viewpoints and issues as I see them, taking into account as best as I can the views of a broad cross-section of citizens throughout Durham City and County. Although I obviously am not speaking for all citizens, I do feel that the issues need to be approached with full concern for all citizens and all problems. Unfortunately, many individuals I have spoken with have been looking at only a few of the problems, such as the need for classrooms *versus* the need to prevent the ghettoization of Durham; or from the point of view of citizens in the black community, the need to improve representation in the administration and the need to improve educational programs and opportunities, especially for poor children. Because so many persons from different areas of the community have been looking at the problems from one perspective or another, I feel there is a need for additional time to develop broader understanding of all the problems and all the points of view. I am therefore urging you to postpone the date of the election on the school bonds and merger questions, so that further communication, understanding, study, and planning can be pursued.

I do feel that the public hearing was a very constructive and positive influence in this regard, as was the "town meeting" held by the Durham Human Relations Council. I was especially pleased with the honest and open expression of views by all members of the boards, as well as the parents, students, and other citizens who spoke out. However, I feel more such meetings and hearings should be held in the near future so that a plan can be developed on the basis of all citizens' views and all educational needs.

I was also pleased that several members of the two boards expressed interest and willingness to consider the educational park concept as a basis for present and future planning in Durham. I personally feel that this concept offers potential solutions to many of the problems that lie behind the present crisis situation. I have also spoken to many citizens who feel an educational park could be a positive development in the Durham community. I urge you to consider the educational park concept as a basis for developing an immediate and long term plan for education in Durham City and County.

I am enclosing some materials concerning the educational parks and related issues. I have prepared the "rationale," "proposal," and discussion of advantages and questions on the basis of my conversations with educators and citizens in the area. I wish to point out that the idea of an educational park for Durham has been suggested for consideration by President Whiting and members of the North Carolina Central University faculty, and a number of North Carolina Central University faculty members have contributed concepts included in the enclosed proposal. I am also including some excerpts from the 1966 Report of the White House Conference, "To Fulfill These Rights," and several recent news items. I hope you will give these materials your consideration before deciding to place the merger and bond issues on the may 15th ballot.

Sincerely yours,

EDWARD A. NELSEN.

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## Statement Presented at School Merger Hearing, March 22, 1971

(By Edward A. Nelsen)

The schools in the Durham area are in a state of crisis. Children in the Durham County System are desperately in need of classroom space. Children in the Durham City System need major renovations in their schools. Children in both systems need instructional programs and facilities which are meaningful and effective for individuals from diverse cultural, socioeconomic, and racial backgrounds.

The school systems should perhpas be merged—merely for the sake of improving efficiency of the administrative organization, improving the representation on the school boards for all citizens, and eliminating competition between two systems for financial support and facilities. But there is little real justification for merging the two systems if the new system does not promise to provide improved educational opportunities for all the children.

It does not appear that the school boards' plan for merging the system will significantly contribute to fulfillment of the diverse educational needs of the children. It does not appear that the plan will provide facilities in a manner that will reduce competition between various areas of the community for classrooms, gymnasiums, libraries, music rooms, and other special facilities. And there are many other issues, problems, and questions which do not appear to be satisfactorily resolved in the proposed plan for merger and construction of new facilities.

It is respectfully proposed that *before* the Durham County Commission submits to the voters a plan for merging the Durham City School System and the Durham County School System, the total educational needs of the community should first be carefully considered. It is also proposed that *before* a plan is submitted, various alternative plans should be considered, and that educational planners should be consulted concerning the feasibility and promise of various plans.

Has the need for new instructional approaches been considered as the bond and merger proposals have been developed? Instructional approaches such as team teaching, ungraded classrooms, individualized instruction, and flexible scheduling offer great potential for teaching children from diverse backgrounds. New kinds of facilities are required if these instructional approaches are to be implemented. In this light, has the promising concept of an educational park been thoroughly considered?

Many alternatives must be considered in developing any plan. It is therefore recommended that a planning committee be established for the prupose of developing a comprehensive, long range plan for education in Durham City and County. The planning committee should be composed of interested educators and citizens, including public school teachers, students, and other persons who will reflect a broad cross-section of the community. Educational planners should be consulted. Moreover, the views of all citizens of Durham City and County should be actively sought as a plan is being developed. I know of a number of interested citizens who wish to offer their services to the Durham City and County School Boards.

I feel that full and complete development of an overall plan would take about one year. However, recognizing the urgency of the present needs for classrooms in Durham it would appear that a planning team could develop a design for the initial phase within about 3 to 6 months. The plan for this initial phase could include a proposal for merger of the two systems, a proposal for construction of new facilities, and a proposal outlining the essential features of an instructional program which would meet the needs of all children in the Durham area.

The educational problems we face are urgent. These problems require drastic and innovative solutions. The future of all our children and of the entire community is at stake. We must develop an educational plan that can unite all citizens of Durham in support of the best possible education for our children.

What are Durham's real educational goals?

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National School Boards Association,
*Washington, D.C., June 7, 1971.*

Hon. Roman C. Pucinski,
*U.S. House of Representatives,*
*Washington, D.C.*

Dear Roman: The National School Boards Association strongly endorses the passage of an Emergency School Aid Quality Integration Education Act and will assist in anyway possible to assure its passage but it has several concerns with some of the specific language now being considered.

First is the matter of discretion. The bulk of funds under S. 1557 are discretionary and as such are subject (1) to impounding or (2) to being awarded for political rather than educational reasons. As a practical matter, local school districts treat grants of this nature differently than ongoing programs. When programs are discretionary and must be both refinanced and renegotiated periodically school boards design them apart from their regular operation so that they can be turned off and on with the acceptance and funding of their applications. Practically questions about the impact of the legislation should be asked. For example, would a local school district really be willing to implement a program which would permantly commit it to operate an education park when no future federal assistance could be assured?

The National School Boards Association favors formula grant programs such as have existed for years in vocational education legislation. These funding procedures as contrasted to strict application programs have the added advantage in that they get school systems out of the "grantsmanship" game. Quality education should not be measured the ability of school systems to add sophisticated staff whose sole function is to develop grant proposals.

The second issue is one relating to proliferation of categories, administrative red tape, etc. Within S. 1557 are a total of 7 separate programs to aid in integration efforts. In at least 12 instances, the language of the bill gives the authority to D-HEW to make rules, regulations, etc. In short, HEW determines who will be funded and how much—all by regulation. We support legislation along the lines of the bill for which you successfully obtained House passage last year. This means a bill containing a basic state-by-state allocation formula with a set aside for the Commissioner to handle those unique situations not covered or inappropriate for state funding—a single 20% set aside for evaluation, experimental television, metropolitan projects, bilingual programs, etc., is *more* than sufficient to meet these needs.

Any legislation should be reviewed very carefully when Standard Metropolitan Statistical Area's are used as a determination in making grants. While the SMSA concept is valuable for statistical purposes, it is often meaningless for programs because the geographic areas are so large. For example, the SMSA for Chicago includes Cook, Du Page, Kane, Lake, McHenry and Will counties, which encompass more than 260 school districts. Considering that many whites flee to the suburbs to avoid an expanding inner-city black population, an immediate question brought to mind is why would the suburbs enter into an integrated agreement? Apart from establishing a category, hence creating a priority, if inter-district arrangement are given a higher priority if general, we could envision two suburbs each with a 20% black population being funded before the inner-cities.

The National School Boards Association does not wish to open all of the old church-state issues with respect to non-public school participation under the bill. However, we believe their participation should be structured in such a way that it is designed to help in the integration of public schools. We welcome cooperative arrangement with non-public schools wherein the net result is the easing of racial tension and the attainment of quality integrated education system. This position of favoring cooperation between public and non-public schools is consistent with our agreement to the 1965 compromise which in turn led to the passage of the Elementary and Secondary Education Act. However, in those instances where non-public schools are either unable or unwilling to help in these integration efforts, they should not be guaranteed financial assistance.

We object to the manner in which attorney fees are handled under Section 16 of S. 1557. We believe it is arbitrary in that it only applies to final orders *against* local education agencies, a state or the U.S. In many instances local school districts are subjected to harrassing law suits having no basis in law or fact. We believe in those instances a court should have the authority to award attorneys fees to the school district so that valuable educational funds a district has had to spend defending itself can be replaced and spent to educate children. This seems only equitable.

We hope that in the deliberation of your committee the problem of resegregation in the south and the almost inescapable total segregation our northern cities are discussed thoroughly. The Senate, in its haste to assure that no Emergency School Aid Quality Integration Education Act funds would not be misspent, has eliminated general aid purposes as eligible items of expense under S. 1557. Yet, it may well be that the only way to resolve the above problems are to upgrade the total educational system in large cities in an effort to discourage white flight and encourage whites into moving back to the cities.

Again I must repeat that you do not consider these comments as opposition to the passage of an Emergency School Aid Quality Integration Education Act. We strongly supported H.R. 19446 in the 91st Congress and will support with modifications H.R. 2266. We will assist you in any way to achieve passage of this valuable legislation.

For your information I am enclosing an Ethnic Distribution Table which was completed by Dr. Kenneth J. Buck, head of our Council of Big City Boards of Education.

Sincerely yours,

AUGUST W. STEINHILBER,
*Director, Federal and Congressional Relations.*

Enclosure.

ETHNIC DISTRIBUTION (PERCENTAGE) [1] OF SCHOOL ENROLLMENT (KINDERGARTEN THROUGH 12TH) 1970-71

| City | Caucasian excluding Spanish speaking; plus other minorities (percent) | Negro and Spanish speaking minorities (percent) | Negro (percent) | Spanish speaking (percent) |
|---|---|---|---|---|
| District of Columbia | 5 | 95 | 95 | |
| San Antonio | 7 | 93 | 15 | 78 |
| Newark | 16 | 84 | 72 | 12 |
| New Oleans | 30 | 70 | 68 | 2 |
| Atlanta | 31 | 69 | 69 | |
| Baltimore | 33 | 67 | 67 | |
| Saint Louis | 34 | 66 | 66 | |
| Oakland | 35 | 65 | 57 | 8 |
| Chicago | 35 | 65 | 55 | 10 |

See footnotes at end of table.

ETHNIC DISTRIBUTION (PERCENTAGE)[1] OF SCHOOL ENROLLMENT (KINDERGARTEN THROUGH 12TH) 1970–71—Continued

| City | Caucasian excluding Spanish speaking; plus other minorities (percent) | Negro and Spanish speaking minorities (percent) | Negro (percent) | Spanish speaking (percent) |
|---|---|---|---|---|
| Detroit | 36 | 64 | 63 | 1 |
| Philadelphia | 37 | 63 | 60 | 3 |
| New York | 39 | 61 | 34 | 26 |
| Cleveland | 40 | 60 | 58 | 2 |
| El Paso | 41 | 59 | 3 | 56 |
| Birmingham | 45 | 55 | 55 | |
| Kansas City | 50 | 50 | 50 | (2) |
| Houston | 51 | 49 | 33 | 16 |
| Louisville | 52 | 48 | 48 | |
| Memphis | 52 | 48 | 48 | |
| Norfolk | 54 | 46 | 45 | 1 |
| Miami | 54 | 46 | 25 | 21 |
| Los Angeles | 54 | 46 | 24 | 22 |
| Cincinnati | 45 | 45 | 45 | |
| Dallas | 58 | 42 | 34 | 8 |
| San Francisco | [3] 58 | 42 | 28 | 14 |
| Buffalo | 59 | 41 | 39 | 2 |
| Pittsburgh | 60 | 40 | 40 | |
| Rochester | 63 | 37 | 33 | 4 |
| Denver | 63 | 37 | 15 | 22 |
| Fort Worth | 64 | 36 | 27 | 9 |
| Indianapolis | 64 | 36 | 36 | |
| Boston | 66 | 34 | 30 | 4 |
| Toledo | 71 | 29 | 26 | 3 |
| Jacksonville | 71 | 29 | 29 | |
| San Jose | 71 | 29 | 2 | 27 |
| Milwaukee | 72 | 28 | 25 | 3 |
| Columbus | 73 | 27 | 27 | |
| Nashville | 75 | 25 | 25 | |
| Oklahoma City | 77 | 23 | 22 | 1 |
| San Diego | 77 | 23 | 12 | 11 |
| Phoenix (9 to 12 only) | 77 | 23 | 8 | 15 |
| Tampa | 82 | 18 | 18 | |
| Omaha | 82 | 18 | 18 | |
| Wichita | 83 | 17 | 15 | 2 |
| Long Beach | 85 | 15 | 9 | 6 |
| Tulsa | 86 | 14 | 13 | 1 |
| Seattle | 86 | 14 | 13 | 1 |
| Portland | 90 | 10 | 9 | 1 |
| Minneapolis | 90 | 10 | 9 | 1 |
| St. Paul | 91 | 9 | 6 | 3 |
| Honolulu | (2) | (2) | (2) | (2) |

[1] Percentages have been rounded off.
[2] Not available.
[3] Includes 17 percent Oriental.

## STATEMENT OF WILLIAM G. HARLEY, THE NATIONAL ASSOCIATION OF EDUCATIONAL BROADCASTERS

The National Association of Educational Broadcasters welcomes this opportunity to comment on the contribution educational communications technology can make toward ameliorating problems incident to desegregation.

The NAEB is the professional association of institutions and individuals engaged in educational radio and television. The membership consists of universities, colleges, school systems and non-profit community corporations which are the licensees or permittees of more than 200 educational television stations, over 200 educational radio stations; more than 90 closed-circuit and instructional television fixed service installations; and some 4,000 individual administrators, producers, teachers, writers, directors, students, artists, engineers and others who are involved in various phases of educational communications.

The purpose of this statement is to point out the range of technological options that can be employed now and in the future to facilitate equal educational opportunity. We feel it is essential that legislation (HR 3998) now being considered by the committee not exclude the contribution that can be made to important social purpose by instructional technology.

Communications technology has grown rapidly in recent years. New devices, and greatly increased sophistication in their use, are now widespread in the U.S.

The majority of communities in the United States now have access to some of these technological capabilities.

As used in this statement, communications technology includes all media by which sound and/or picture information can be moved from one point in time or space to another. It includes all broadcast modes using public airwaves or transmission via wire, as well as the many modes of recording now available, plus the new video recording forms which will soon reach the marketing stage. A comprehensive list of these electronic tools both presently available and in development would include radio and television broadcast stations, closed circuits installations, ITFS, satellites, audio and video cassettes, and cable.

But these are only distribution systems and their value is only potential. The educational institutions and organizations which can manage the development and production of materials must become fully prepared to carry out the reforms which these communication systems will make it possible to afford and to manage.

The scope of the schools' capability to use television, for example, was evidenced by preliminary figures released last month by the National Center for Educational Statistics of the United States Office of Education. In brief, the preliminary survey figures revealed the following:

(1) 75% of all public schools now have television receivers.

(2) 25% have videotape recorders.

(3) 82% of all pupils are in schools having TV receivers.

(4) In large cities, more than 90% of public schools have receivers.

(5) Only 13% of the schools, mostly away from large cities, have none of the above forms of advanced instructional technology.

(6) More than 70% of schools having TV receivers use telecasts from educational television stations.

Television and radio as distributors of instructional materials to home and school and college lessons for classrooms, and *Sesame Street* for pre-schoolers at home. But since television has been used in many different ways to help solve educational problems of varying scale and scope, the following illustrative examples are included.

*Magnification and Visual Display.*—Simple video systems can be used as convenient magnifying and display implements for group viewing. Laboratory materials, graphic pieces, book pages, etc. are placed under a magnifying lens and the resultant image is fed to TV receivers placed in classrooms or laboratory areas.

*Specimens for Performance.*—In such academic areas as speech training, acting, practice teaching, music performance and athletic development, low-cost portable videotape devices are employed to record student performances for analysis by the student himself, his classmates or his instructor.

*Administrative Prescription.*—Some institutions are finding television effective for giving directions in new activities. For example, at the Pennsylvania State University, students coming into a science laboratory are shown brief videotape programs which tell them exactly how to proceed with the scheduled experiments. (In the Southeast, the Agricultural Extension Service has experimented with administrative "briefings" for its agent specialists through statewide ETV networks. In some instances, long-distance telephone lines were used to provide "two-way" communication between the parties involved.)

*Materials for Drill Exercise.*—Television can be employed as a mechanical "drill master" in such areas as language training and calisthenics. The audio-visual system cues class groups to make responses on an appropriate, interactive schedule. The technique frees teachers from the burden of having to conduct such rote-learning activities in person.

*Data Storage and Retrieval.*—Videotape can be a useful archive medium for the storage of certain aural-and-visual resource "data" in a convenient retrieval form for direct, instructional use: lectures by visiting authorities, music performances by famous guest artists, interviews with primary sources in history, etc.

*Simulation and Gaming Experiences.*—Videotape materials can be utilized as elements in simulation-and-gaming exercises. One of the most effective uses is found in teacher education.

*Materials for Auto-Tutorial Study.*—Television can be linked up as a display system in the new study-carrel configurations springing up in "media centers" all across the country. These arrangements allow students to "dial-up" videotape or film materials for individual study.

*An Electronic Blackboard.*—There are on the market now several so-called "slow-scan television" devices which enable the transmission of static pictorial and diagrammatic materials over regular telephone lines. These devices are especially helpful in such academic areas as mathematics because they enable a television receiver to become an "electronic blackboard" on which written figures can appear.

*Direct Interchange.*—A few institutions make use of television as a two-way communications device. They have installed a "true" circuit between two or more meeting locales, each having audio-video pick-up capability. Persons gathered at each of the locales are able to communicate aurally and visually with persons at the other locales.

*Topics for Class Assignment.*—One of the oldest academic uses of television is that of assigning a particular program to serve as topical basis for student themes or classroom discussion. Documentary and fine arts programs from educational television outlets as well as commercial stations are especially suitable for this purpose.

*Materials for Curricular Enrichment.*—Customarily programs of this kind are not considered *sine-qua-non* components of the courses with which they are used. Instead they are regarded as supplementary and extraordinary, with their main emphasis being on special motivation and effect.

*Articulable Teaching Elements.*—Television can be used to supply teachers lesson elements which are substantially articulable with other components of course operations, including textbook materials. Such television programs can be assigned a specific part of the total presentational load.

*Electronic Adjunct Materials for Correspondence Course Training.*—Television can be used as an adjunct to the familiar correspondence course format. In some instances, enrolled students are advised that they should tune in to televised lectures and demonstrations which will be very helpful in their understanding of certain concepts to be treated through the regular (correspondence) format.

*All the Elements for Total Teaching.*—Students can be taught exclusively by televised materials. The technique is employed in "extension education" situations where there are serious logistical blocks in the way of providing students with printed materials or in having them come together to meet with live instructors. (North Carolina State University has made use of this kind of televised training as in-service education for professional agriculturalists.)

Educators have now had 17 years of experience using TV in these ways, and 50 years' experience in radio to aid education. Surely these experiences can be helpful here.

The uses of television described thus far permit the mixing of new and more effective teaching materials into the basic and familiar educational setting. Taking many of these separate uses together, however, it becomes possible to understand how television as a communications instrument can be tailored to effect quite different and promising instructional operations.

These TV and radio techniques can be applied to a single school, a whole community, a state, or nationwide, or any combination of these areas. Costs, of course, vary with techniques and objectives. Simple one-school or one-district activities cost relatively little. National service can be relatively expensive, although person-reached costs can be very low in either case.

It may be that a period of experimentation and demonstration will be required in some areas to show what these devices can do in this assignment. Thus a limited number of model centers might be instituted as an effective means of aiding the legislation's intent.

In conclusion, we would like to underscore the NAEB's interest in H.R. 3998 now before this committee. The need to pass legislation which will assist school systems in meeting the problems attendant to desegregation is clear and urgent. The facilitating role that educational radio and television in its many forms can play both in the community and in schools is a far too potent and useful resource to be overlooked as legislative strategies are designed to meet the pressing problems which attend schools as they cope with desegregation and seek to end racial isolation.

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